

**State Court Administrative Office
Trial Court Services
Problem-Solving Courts**

**Michigan Association of Treatment
Court Professionals**

**Mental Health Court Advisory
Committee**



Adult Mental Health Court Standards, Best Practices, and Promising Practices

September 2018



Introduction

Purpose

This manual is intended to assist Michigan’s adult mental health courts in complying with the mental health court statute,¹ best practices, and the *Essential Elements of a Mental Health Court*. The manual was written by staff from the State Court Administrative Office and members of the Mental Health Court Advisory Committee.

Mental health courts are based on the drug court model, so much of the research in this manual is from studies of drug courts; relevant information and practices have been applied to the mental health court concept. The content in this manual comes from many sources, but it leans most heavily on the National Association of Drug Court Professionals *Adult Drug Court Best Practice Standards*, [Volume I](#) and [Volume II](#). When “drug court” is referenced in this manual, it is because the research was conducted on drug courts and not mental health courts. Until mental health court research suggests different practices are appropriate for mental health courts, the assumption is that drug court research is applicable to this population. This manual is intended for all adult mental health court team members, and the team should use it to ensure that their program is following the statute and implementing best practices.

Definitions

The chapters in this manual include three types of information:

- **Standard:** Standards are pulled directly from the mental health court statute, the *Essential Elements of a Mental Health Court*, or case law and precedent that are binding on Michigan courts.
- **Best Practice:** Best practices are supported by scientific research and data or nonbinding case law, and are proven methods to follow. Best practices have been shown by empirical research to produce better outcomes than other practices, and their use results in higher-quality programs.
- **Promising Practice:** Promising practices are not yet supported by scientific research or data, but anecdotal evidence and experience suggest they are helpful in adhering to the model. Promising practices are recommendations for courts to follow to operate a higher-quality program.

¹ See Appendix A.

How to Use This Manual

Each chapter is divided into relevant topics. Included within each topic are the standards, best practices, and promising practices, as well as the supporting authority or research. Not all topics have all three subdivisions: some topics have only best practices, and other topics do not have promising practices.

There are two kinds of best practices in this manual: best practices that a program must follow in order to become a certified mental health court (bolded) and best practices that a program should be following.

There are footnotes throughout the manual that refer to additional research. The 14 appendices are referenced in the chapters, including model documents that courts can use to comply with certain standards and required best practices. If you would like to request training or technical assistance, please contact your regional administrator. If you have questions, please contact TrialCourtServices@courts.mi.gov.

Certification

In order for a program to become a certified adult mental health court under MCL 600.1091, it must comply with all of the standards and [required best practices](#) in this manual. All standards and required best practices are in bold.

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Chapter 1: Roles and Responsibilities of the Mental Health Court Judge

This chapter discusses the judge's role on the mental health court team. The judge serves as the leader of the team and plays an important part in guiding participants through the program. Specific topics include the term as a mental health court judge, staffing meetings, and review hearings. Confidentiality is mentioned but discussed in further detail in Chapter 3. The judge is also important in ensuring participants' due process rights are protected; best practices regarding due process are discussed in Chapter 4.

In order for a program to become a certified mental health court, it must comply with all of the standards and required best practices in this chapter. All standards and required best practices are in bold.

1. General

a. Standards

- i. **Programs designed to adhere to the 10 essential elements of a mental health court promulgated by the bureau of justice assistance that include all of the following characteristics:**
 - **A team of criminal justice and mental health staff and treatment providers receives special, ongoing training and assists mental health court participants achieve treatment and criminal justice goals by regularly reviewing and revising the court process. (MCL 600.1090(e)(ii)(H))**
- ii. **An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. A judge should always be aware that the judicial system is for the benefit of the litigant and the public, not the judiciary. (Michigan Code of Judicial Conduct, Canon 1)**

b. Best Practices

- i. **Participants ordinarily appear before the same judge throughout their enrollment in the mental health court.**
 - **Drug courts that rotated the judicial assignment or where participants appeared before alternating judges had the poorest outcomes in several research studies. (Finigan, Carey, & Cox, 2007) (National Institute of Justice, 2006)**

- ii. **The mental health court judge attends current training events on legal and constitutional issues in mental health courts, judicial ethics, evidence-based substance abuse and mental health treatment, behavior modification, and community supervision. Attendance at annual training conferences and workshops ensures contemporary knowledge about advances in the mental health court field.**
 - Because judges have such a substantial impact on outcomes in drug court, continued training is especially important. (Carey, Mackin, & Finigan, 2012)
- iii. The judge presides over the mental health court for no less than two consecutive years.
 - When judges preside over drug courts for at least two years, those programs have significant cost savings and significantly lower recidivism. (Carey, Pukstas, Waller, Mackin, & Finigan, 2008) (Carey, Mackin, & Finigan, 2012)
 - Even greater reductions in recidivism were found in courts where the judges oversaw the drug court on a voluntary basis and the term was indefinite. (Carey, Mackin, & Finigan, 2012)
- iv. The judge bases interaction with mental health court participants on the four principles of procedural fairness: voice, neutrality, respectful treatment, and trustworthy authorities.
 - Drug use, probation violations, and recidivism rates were all reduced in drug courts that applied the four principles of procedural fairness. (MacKenzie, 2016)

2. Staffing Meetings and Review Hearings

a. Standards

- i. **The judge is the final arbiter of factual controversies and makes the final decision concerning the imposition of incentives or sanctions that affect a participant's legal status or liberty.**
 - **In order to continue to participate in and successfully complete a mental health court program, an individual shall comply with all court orders, violations of which may be sanctioned at the court's discretion. (MCL 600.1097(1))**
 - **If the participant is accused of a new crime, the judge shall have the discretion to terminate the participant's participation in the mental health court program. (MCL 600.1097(2))**
- ii. **In the performance of judicial duties, the following standards apply:**
 - **A judge should be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan**

interests, public clamor, or fear of criticism. (Michigan Code of Judicial Conduct, Canon 3(A)(1))

- A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers and of staff, court officials, and others subject to the judge's direction and control. (Michigan Code of Judicial Conduct, Canon 3(A)(3))
- Without regard to a person's race, gender, or other protected personal characteristic, a judge should treat every person fairly, with courtesy, and respect. (Michigan Code of Judicial Conduct, Canon 3(A)(10))

b. Best Practices

- i. **The judge regularly attends staffing meetings during which the mental health court team reviews each participant's progress and discusses potential consequences for performance.**
 - Research has consistently shown that when the drug court judge regularly attends staffing meetings, cost savings increase and recidivism is reduced. (Carey, Pukstas, Waller, Mackin, & Finigan, 2008) (Carey, Mackin, & Finigan, 2012)
- ii. **The judge considers the perspectives of all team members before making final decisions that affect participants' welfare or liberty interests. The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions.**
 - The collaborative nature of drug courts brings together experts from various disciplines. Their expertise and shared information allows the judge to make better-informed decisions. (National Association of Drug Court Professionals, 2013) (Hora & Stalcup, 2008)
- iii. **Participants appear before the judge for status hearings no less frequently than every two weeks during the first phase of the program. The frequency of status review hearings may be reduced gradually after participants have initiated abstinence from alcohol and illicit drugs and are regularly engaged in treatment. Status review hearings are scheduled no less frequently than every four weeks until participants are in the last phase of the program.**
 - A substantial body of research demonstrates the importance of scheduling status hearings no less frequently than every two weeks during the first phase of a drug court. Participants had significantly better treatment attendance, substance use abstinence, and graduation rates when they were required to appear before the judge every two weeks. (National Association of Drug Court Professionals, 2013) (Festinger, Marlowe, Lee, Kirby, Bovasso, & McLellan, 2002)

- iv. The judge spends sufficient time during status review hearings to review each participant's progress in the program. Evidence suggests judges should spend a minimum of three minutes interacting with each participant in court.
 - Recidivism is significantly reduced, by as much as 153 percent, in drug courts where the judge spent at least three minutes interacting with each participant. The same study showed that cost savings were also improved when the judge spent the minimum three minutes with each participant. (Carey, Mackin, & Finigan, 2012)
- v. The judge offers supportive comments to participants, stresses the importance of their commitment to treatment and other program requirements, and expresses optimism about their abilities to improve their health and behavior. The judge does not humiliate participants or subject them to foul or abusive language. The judge allows participants a reasonable opportunity to explain their perspectives concerning factual controversies and the imposition of sanctions, incentives, and therapeutic adjustments.
 - Research has consistently shown that the perceived quality of interactions between participants and the drug court judge are among the most influential factors for success in the program. (National Association of Drug Court Professionals, 2013, p. 23)
 - Significantly greater reductions in crime and substance abuse resulted when the judges were independently rated as being more fair, attentive, caring, and enthusiastic. (Zweig, Lindquist, Downey, Roman, & Rossman, 2012)

3. Upon Completion or Termination

a. Standards

- i. **Upon completion or termination of the mental health court program, the court shall find on the record or place a written statement in the court file indicating whether the participant completed the program successfully or whether the individual's participation in the program was terminated and, if it was terminated, the reason for the termination.² (MCL 600.1098(1))**
- ii. **The court shall send a record of a discharge and dismissal [under MCL 600.1095, and as outlined in MCL 600.1098(3)] to the criminal justice information center of the department of state police, and the department of state police shall enter that information into the law enforcement information network with an indication of participation by the individual in a mental health court. (MCL 600.1098(5))**

² See Appendix B. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/MHC-DischargeStatement.pdf>.

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Chapter 2: Participant Supervision and Compliance

This chapter discusses participant supervision and compliance with program requirements. Specific topics include the mental health court supervision caseload, frequency of monitoring events, services provided to participants, incentives and sanctions, phase promotion and graduation, and termination from the mental health court. Several topics are addressed in additional detail in other chapters.

In order for a program to become a certified mental health court, it must comply with all of the standards and required best practices in this chapter. All standards and required best practices are in bold.

1. Caseload

a. Best Practices

- i. Specialized probation caseloads should not exceed 45 active participants per supervision officer.
 - Probationers on 45:1 caseloads received significantly more mental health services, were less likely to be arrested, and were less likely to have their probation revoked. (Prins, 2009)
- ii. The number of individuals participating in the program as a cohort or a track should be fewer than 125.
 - Programs that have fewer than 125 individual participants at one time have statistically significant reductions in recidivism. (Carey, Mackin, & Finigan, 2012)
 - Drug courts can serve more than 125 participants with effective results if the programs have sufficient personnel and resources to accommodate larger numbers of individuals. (Carey, Mackin, & Finigan, 2012) (Shaffer, 2010)

b. Promising Practices

- i. Case managers should have caseloads that are sufficiently manageable to perform core functions and monitor the overall conditions of participation.
 - Case managers should serve as conduits of information for the court about the status of treatment and support services. (Thompson, 2007)
- ii. Case managers also help participants prepare for their transition out of the court program by ensuring that all needed treatment and services will remain available and accessible after their court supervision concludes. (Thompson, 2007)

- iii. The caseload for a treatment provider administering individual therapy should not exceed a 40:1 ratio.
 - Treatment providers serve principally as treatment providers, administering individual therapy or counseling and perhaps facilitating or co-facilitating group interventions. They may also refer participants for ancillary services such as mental health treatment or vocational training. The caseload census guideline is derived from expert consensus. (Case Management Society of America & National Association of Social Workers, 2008) (National Association of Drug Court Professionals, 2015)
 - State rules on mental health and substance abuse services say that the equivalent of one or more full-time counselors shall be available for approximately 40 clients. (Michigan Mental Health and Substance Abuse Services Rules, Part 7, R 325.14701)

2. Frequency

a. Standards

- i. **A mental health court shall provide a mental health court participant with all of the following:**
 - **Consistent and close monitoring of the participant, and interaction among the court, treatment providers, probation, and the participant. (MCL 600.1096(1)(a))**
 - **Periodic evaluation assessments of the participant's circumstances and progress in the program. (MCL 600.1096(1)(c))**

b. Best Practices

- i. **Participants appear before the judge for status hearings at least once every two weeks during the first phase of the program. The frequency of status review hearings may be reduced gradually after participants have initiated abstinence from alcohol and illicit drugs and are regularly engaged in treatment. Status review hearings are scheduled at least once every four weeks until participants are in the last phase of the program.**
 - A substantial body of research demonstrates the importance of scheduling status hearings no less frequently than every two weeks during the first phase of a drug court. Participants had significantly better treatment attendance, substance use abstinence, and graduation rates when they were required to appear before the judge every two weeks. (National Association of Drug Court Professionals, 2013) (Festinger, Marlowe, Lee, Kirby, Bovasso, & McLellan, 2002)

- ii. Participants meet individually with a clinical case manager or comparable treatment professional at least weekly during the first phase of mental health court.
 - Studies consistently find that drug courts reduce recidivism and are more cost-effective when participants meet individually with a clinical case manager or comparable treatment professional at least weekly during the first phase of the program. (Carey, Mackin, & Finigan, 2012) (Cissner, et al., 2013)
- iii. The judge spends sufficient time during status review hearings to review each participant's progress in the program. Evidence suggests judges should spend a minimum of three minutes interacting with each participant in court.
 - Recidivism is significantly reduced, by as much as 153 percent, in drug courts where the judge spent at least three minutes interacting with each participant. The same study showed that cost savings were also improved when the judge spent the minimum three minutes with each participant. (Carey, Mackin, & Finigan, 2012)

3. Services to Participants

a. Standards

- i. **A mental health court shall provide a mental health court participant with all of the following:**
 - **Mental health services, substance use disorder services, education, and vocational opportunities as appropriate and practicable. (MCL 600.1096(1)(e))**
- ii. **Programs designed to adhere to the 10 essential elements of a mental health court promulgated by the bureau of justice assistance that include all of the following characteristics:**
 - **Connect participants to comprehensive and individualized treatment supports and services in the community and strive to use, and increase the availability of, treatment and services that are evidence based. (MCL 600.1090(e)(ii)(F))**

b. Best Practices

- i. Participants receive psychiatric medication to treat serious mental health symptoms.
 - Psychiatric medication decreased the odds of negative termination. (Linhorst, 2015)
 - Participants with mental health symptoms who were prescribed psychiatric medications were seven times more likely to graduate successfully from drug court than participants with mental health symptoms who did not receive psychiatric medication. (Marlowe, 2016)

- ii. Mental health courts provided specialized classes and treatment options.
 - Courts that prioritized intensive monitoring, tailored treatment options, and provided additional program supports saw a decrease in jurisdictional crime rates. (Bullard, 2014)
- iii. In the first phase of mental health court, participants receive services designed primarily to address responsivity needs such as deficient housing; mental health symptoms; and substance-related cravings, withdrawal, or anhedonia. In the interim phases of mental health court, participants receive services designed to resolve criminogenic needs that co-occur frequently with substance abuse, such as criminal thinking patterns, delinquent peer interactions, and family conflict. In the later phases of mental health court, participants receive services designed to maintain treatment gains by enhancing their long-term adaptive functioning, such as vocational or educational counseling.
 - Outcomes, including graduation rates, recidivism rates, and engagement in treatment, are improved when rehabilitation programs address ancillary needs in this specific sequence. (National Association of Drug Court Professionals, 2015)
- iv. Participants with deficient employment or academic histories receive vocational or educational services beginning in a late phase of mental health court.
 - At least two studies of drug courts have reported improved program retention, graduation rates, and treatment retention when unemployed or underemployed participants received a manualized, cognitive-behavioral vocational intervention. (Deschenes, Ireland, & Kleinpeter, 2009) (Leukefeld, Webster, Staton-Tindall, & Duvall, 2007)
- v. Where indicated, participants receive assistance finding safe, stable, and drug-free housing beginning in the first phase of mental health court and continuing as necessary throughout their enrollment in the program.
 - Participants are unlikely to succeed in treatment if they do not have a safe, stable, and drug-free place to live. (Quirouette, Hannah-Moffat, & Maurutto, 2015)

4. Incentives and Sanctions

a. Standards

- i. **A mental health court shall provide a mental health court participant with all of the following:**
 - **A regimen or strategy of appropriate and graduated but immediate rewards for compliance and sanctions for noncompliance, including, but not limited to, the possibility of incarceration or confinement. (MCL 600.1096(1)(d))**
- ii. **Programs designed to adhere to the 10 essential elements of a mental health court promulgated by the bureau of justice assistance that include all of the following characteristics:**
 - **Criminal justice and mental health staff collaboratively monitor participants' adherence to court conditions, offer individualized graduated incentives and sanctions, and modify treatment as necessary to promote public safety and participants' recovery. (MCL 600.1090(e)(ii)(I))**

b. Best Practices

- i. **The mental health court has a range of sanctions of varying magnitudes that may be administered in response to program infractions.**
 - Drug courts are able to reduce substance use and recidivism when the sanctions for failing to meet difficult goals increase progressively in magnitude over successive infractions. This gives treatment a chance to take effect, and prepares participants to meet steadily increasing responsibilities in the program. (National Association of Drug Court Professionals, 2013)
 - Sanctions that are weak in magnitude can cause habituation in which the individual becomes accustomed, and thus less responsive to, punishment. Imposing high-magnitude sanctions when a participant fails to meet an easy goal helps to avoid habituation. (National Association of Drug Court Professionals, 2013)
- ii. **Sanctions are imposed as quickly as possible after noncompliant behavior. Mental health courts do not wait for the next review hearing to impose a sanction if the behavior can be addressed more immediately.**
 - The value of having sanctions imposed immediately after noncompliant behavior is a central tenet of behavior modification. Study results show that recidivism and cost-savings do not improve when drug courts wait until the next scheduled court appearance for noncompliant participants instead of bringing them in earlier. (Carey, Mackin, & Finigan, 2012)

- iii. Give out tangible symbolic incentives that are personalized to the participant.
 - Courts that gave out certificates of completion as incentives after each client moved up to the next level of the tiered-program structure, gave tangible symbolic incentives (coins and certificates of recognition) that were personalized to the individuals, and brought snacks for “honor roll” and/or used a progress chart/honor roll board that notified clients before court that they were to be rewarded for good behavior saw a decrease in jurisdictional crime rate. (Bullard, 2014)
- iv. Use jail sparingly as a sanction.
 - Successful mental health courts averaged 15.61 fewer jail days than less successful courts for a typical maximum jail sentence during the court program. (Bullard, 2014)
- v. Divide compliant and noncompliant clients/defendants in the courtroom.
 - Mental health courts that visibly divided compliant and noncompliant clients/defendants saw a decrease in jurisdictional crime rate. (Bullard, 2014)
- vi. Jail sanctions are definite in duration and typically last no more than five days. Participants are given access to counsel and a fair hearing if a jail sanction might be imposed as a liberty interest is at stake.
 - Drug courts significantly lower recidivism and improve cost-savings when they use jail sanctions sparingly. (Carey, Pukstas, Waller, Mackin, & Finigan, 2008)
 - Research indicates that jail sanctions produce diminishing returns after approximately three to five days. (Carey, Mackin, & Finigan, 2012)
- vii. Participants do not receive punitive sanctions if they are otherwise compliant with their treatment and supervision requirements but are not responding to the treatment interventions. The appropriate course of action may be to reassess the individual and adjust the treatment plan accordingly.
 - If a drug court imposes substantial sanctions for substance use early in treatment, the team is likely to run out of sanctions and reach a ceiling effect before treatment has taken effect. Therefore, drug courts should ordinarily adjust participants’ treatment requirements in response to positive drug tests early in the program. (Chandler, Fletcher, & Volkow, 2009)
- viii. Programs have a written schedule of sanctions for infractions that is shared with participants, but the team retains discretion to overrule the sanctions if there is good reason to do so.
 - Multistate research showed the most effective programs with regard to recidivism included greater predictability of sanctions. (Rossman & Zweig, 2012)

5. Phase Promotion and Graduation

a. Standards

- i. In order to continue to participate in and successfully complete a mental health court program, an individual shall comply with all court orders, violations of which may be sanctioned at the court's discretion. (MCL 600.1097(1))**
- ii. If the participant is accused of a new crime, the judge shall have the discretion to terminate the participant's participation in the mental health court program. (MCL 600.1097(2))**
- iii. The court shall require that a participant pay all court fines, court costs, court fees, restitution, and assessments, and pay all, or make substantial contribution toward payment of, the costs of the treatment and the mental health court program services provided to the participant, including, but not limited to, the costs of drug or alcohol testing or counseling. However, except as otherwise provided by law, if the court determines that the payment of court fines, court fees, or drug or alcohol testing expenses under this subsection would be a substantial hardship for the individual or would interfere with the individual's treatment, the court may waive all or part of those court fines, court fees, or drug or alcohol testing expenses. The cost of treatment shall be governed by chapter 8 of the mental health code, 1974 PA 258, MCL 330.1800 to 330.1842, if applicable. (MCL 600.1097(3))**
- iv. The court shall not sentence a defendant to a term of incarceration, nor revoke probation, for failure to comply with an order to pay money unless the court finds, on the record, that the defendant is able to comply with the order without manifest hardship and that the defendant has not made a good-faith effort to comply with the order. (MCR 6.425(E)(3)(a))**
- v. If the court finds that the defendant is unable to comply with an order to pay money without manifest hardship, the court may impose a payment alternative, such as a payment plan, modification of any existing payment plan, or waiver of part or all of the amount of money owed to the extent permitted by law. (MCR 6.425(E)(3)(b))**

b. Best Practices

- i. Phase promotion is predicated on the achievement of realistic and defined behavioral objectives, such as completing a treatment regimen or remaining drug-abstinent for a specific period of time.**
 - Drug courts have significantly better outcomes when they have a clearly defined phase structure and concrete behavioral requirements for advancement through the phases. (Carey, Mackin, & Finigan, 2012)**

- Phase advancement should not be based simply on the amount of time that participants have been enrolled in the program. (National Association of Drug Court Professionals, 2013)
- ii. A period of greater than 90 continuous days of negative drug test results should be required before a participant is eligible to graduate.
 - Drug courts where participants were expected to have greater than 90 days clean (demonstrated by negative drug tests) before graduation had 164 percent greater reductions in recidivism compared with programs that expected less clean time. (Carey, Mackin, & Finigan, 2012)

6. Termination

a. Standards

- i. **If the participant is accused of a new crime, the judge shall have the discretion to terminate the participant's participation in the mental health court program. (MCL 600.1097(2))**

b. Best Practice

- i. Mental health courts frequently acknowledged fear of graduation and adapted portions of the program to foster self-confidence.
 - Mental health courts that use program adaptations like mentor programs, alumni programs, or extension of the final program phase saw a decrease in jurisdictional crime rate. (Bullard)

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Chapter 3: Confidentiality

This chapter addresses confidentiality issues in mental health court and shares information with Chapter 4 (Due Process), so readers should review chapters 3 and 4 together. Specific information in this chapter includes the Health Insurance Portability and Accountability Act (HIPAA), 42 CFR Part 2, redisclosure, records management, and staff training.

In order for a program to become a certified mental health court, it must comply with all of the standards and required best practices in this chapter. All standards and required best practices are in bold.

1. Confidentiality

a. Standards

- i. **Programs designed to adhere to the 10 essential elements of a mental health court promulgated by the bureau of justice assistance that include all of the following characteristics:**
 - **Health and legal information are shared in a manner that protects potential participants' confidentiality rights as mental health consumers and their constitutional rights as defendants. Information gathered as part of the participants' court-ordered treatment program or services are safeguarded from public disclosure in the event that participants are returned to traditional court processing. (MCL 600.1090(e)(ii)(G))**
- ii. **The Health Insurance Portability and Accountability Act (HIPAA) is a federal law that protects confidentiality and the security of protected health information. While it does not specifically apply to mental health courts, HIPAA does apply to the treatment agencies partnering with mental health courts, so mental health courts should also comply with HIPAA. Full text of the HIPAA privacy law is available [here](#).**
- iii. **Title 42 of the United States Code, Section 290dd-2 is the federal law that protects the confidentiality of the identity, diagnosis, prognosis, or treatment of any patient records which are maintained in connection with the performance of any federally assisted program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research. 42 CFR, Part 2, contains the regulations implementing the alcohol and substance abuse confidentiality law. Full text of the law is available [here](#).**
 - **A mental health court's performance of, or request for, an assessment of chemical dependency of a mental health court participant, or a referral to treatment, or any progress report regarding that treatment, places the mental health court within the parameters of 42 CFR Part 2, section 2.11.**

- iv. **Information in the record of a recipient, and other information acquired in the course of providing mental health services to a recipient, shall be kept confidential and shall not be open to public inspection. The information may be disclosed outside the department, community mental health services program, licensed facility, or contract provider, whichever is the holder of the record, only in the circumstances and under the conditions set forth in MCL 330.1748 section 748 or section 748a. MCL 330.1748(1). Full text is available [here](#).**
- v. **Except as otherwise permitted in Michigan mental health court statute, any statement or other information obtained as a result of participating in a preadmission screening and evaluation assessment under subsection (3) is confidential and is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be used in a criminal prosecution, unless it reveals criminal acts other than, or inconsistent with, personal drug use. (MCL 600.1093(4))**
- vi. **Confidential treatment court information and records may not be used to initiate or to substantiate any criminal charges against a participant or to conduct any investigation of a participant. (42 CFR, Section 2.35(d))**
- vii. **State law may neither authorize nor compel any disclosure prohibited by the federal regulations, but where state law prohibits disclosure that would be permissible under the federal regulations, the stricter standard applies. (42 CFR, Section 2.20)**
- viii. **Treatment courts may receive or release information or records of participants only with the specific knowing, voluntary, and written consent of the participant or under certain very limited exceptions. (42 CFR, Sections 2.22 and 2.31(a))**
 - **Waiver is the “voluntary relinquishment of a known right.” (Kelly v Allegan Circuit Judge, 1969)**
 - **Consents must include the following under 42 CFR, Sections 2.14-2.35:³**
 - **The specific name or general designation of the program or person permitted to make the disclosure.**
 - **The name of the participant permitting disclosure.**
 - **The name or title of the individual(s), or the name of the organization, to which (re)disclosure is to be made.**
 - **If a general designation is used (agency name or staff title), without a specific named person, then a statement must be included on the consent form that the patient (or other individual authorized to sign in lieu of the patient) confirms their understanding that, upon their request and consistent with this**

³ See Appendix C. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/ReleaseInfoMultiParty.pdf>.

part, they must be provided a list of entities to which their information has been disclosed under the general designation. (See § 2.13(d))

- The purpose of the (re)disclosure.
 - How much and what kind of information is to be disclosed, which must be limited to the information which is necessary to carry out the stated purpose.
 - The participant's signature; and the signature of a person authorized to give consent for a minor.
 - The date on which consent is signed.
 - A statement that the consent is subject to revocation at any time except to the extent that the program or person which is to make the disclosure has already acted in reliance on it. Acting in reliance includes the provision of treatment services in reliance on a valid consent to disclose information to a third party payer. (Note: this element, concerning the revocation of consent, should not be included in consent forms in criminal mental health courts.)
 - Date, event, or condition upon which the consent will expire. The date, event, or condition must insure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given.
- Federal regulations require that the scope of the disclosures be limited to the information necessary to carry out the purpose of the disclosures. (42 CFR, 2.13(a))
- ix. The participant must be advised, orally and in writing, that federal law protects the confidentiality of treatment records. The notice must cite Section 290dd-2 and the implementing regulations (Sections 2.1 through 2.67 of Title 42 of the Code of Federal Regulations), and must state the following:⁴
- Treatment information is ordinarily kept confidential;
 - It is a crime to violate this confidentiality requirement, which the participant may report to appropriate authorities, with the authority's name and contact information provided;
 - Notwithstanding this confidentiality requirement, covered information may be released under specified circumstances (which should be listed for the participant); and

⁴ See Appendix C. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/ReleaseInfoMultiParty.pdf>.

- **Federal law does not protect information relating to crimes committed on the premises of the program, crimes against program personnel, or the abuse or neglect of a child.**
- x. **Any documented treatment information distributed on the basis of the treatment participant's consent should be accompanied by a Notice of Prohibition Against Redisclosure.⁵ (42 CFR, Section 2.32)**
- xi. **Treatment courts may not disclose protected health information in response to a subpoena or a search warrant or any other form of request, even if signed by a judge, unless that client signs a consent form authorizing such disclosure or a court of competent jurisdiction enters an authorizing order under the standards set forth in the Code of Federal Regulations. (42 CFR, Section 2.61)**
- xii. **Confidential records should be kept in a secure room and locked container. Access to confidential records must be limited to authorized individuals. (42 CFR, Section 2.16)**

b. Best Practices

- i. **Mental health court planning teams are familiar with relevant federal and state laws and regulations in order to develop appropriate policies and procedures.**
 - Because drug court programs are integrally involved with supervising the participation of drug offenders in substance abuse treatment, the programs must take into account federal requirements as well as applicable state laws. (Holland, 1999)
- ii. **Confidential records are protected after consent expires or is revoked.**
 - All file storage systems should include procedures for limiting access to records after the participant's consent expires or is revoked. Thus, paper records that can be accessed by all drug court personnel during the duration of the participant's consent should be transferred to a more restricted storage facility as soon as the consent is terminated. Records on computers can be sealed by changing the password or other access. (Tauber, Weinstein, & Taube, 1999)
- iii. **Treatment courts adopt written procedures and/or policies, which regulate and control access to and use of written and electronic confidential records. Written procedures include requests for access to confidential information by the public, attorneys, or any interested party outside the treatment court team.⁶ (Meyer, 2011)**

⁵ See Appendix D. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/NoticeProhibitionAgainstRedisclosure.pdf>.

⁶ See Appendices E and F. These model documents are also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/ConfidentialityPP.pdf> and <https://dccmis.micourt.org/resources/MI/DCCMIS%20User%20Confidentiality%20Agreement.pdf>.

- iv. **Treatment courts establish a memorandum of understanding (MOU) on confidentiality and have all team members and replacement team members sign and agree to follow confidentiality procedures.⁷ (Tauber, Weinstein, & Taube, 1999)**
- v. **Electronic data that is subject to confidentiality standards must be protected by security walls and password-protected. Access shall be limited and disclosure/re-disclosure shall be subject to approval by the treatment court judge and team.⁸ (Tauber, Weinstein, & Taube, 1999)**
- vi. **Pre-court staffing meetings may be closed to participants and the public. (State of Washington v. Sykes, 2014) If open, compliance with consent requirements must be obtained.⁹**
- vii. Treatment courts should receive training on federal confidentiality requirements and how they affect treatment court practitioners and contractors. (Meyer, 2011)
- viii. Each treatment court should designate a team member as their confidentiality compliance officer. The confidentiality compliance officer should be aware of, and consulted about, all third-party inquiries pertaining to mandated disclosures and permitted redisclosures under the federal regulations. (Meyer, 2011)

c. Promising Practices

- i. Treatment courts should receive training on federal confidentiality requirements and how they affect treatment court practitioners and contractors.
- ii. Review hearings should be indicated on dockets as judicial review hearings and not as mental health court hearings. This should apply to all printed versions of the docket.
- iii. Treatment courts should require a written consent and notice form for treatment court visitors and observers.
- iv. Non-treatment court staff should be advised as to treatment court confidentiality requirements.

⁷ See Appendix G. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/ConfidentialityMOU.pdf>.

⁸ See Appendices E and F. These model documents are also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/ConfidentialityPP.pdf> and <https://dccmis.micourt.org/resources/MI/DCCMIS%20User%20Confidentiality%20Agreement.pdf>.

⁹ See Appendix H. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/VisitorConfidentialityForm.pdf>.

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Chapter 4: Due Process

This chapter addresses procedural due process in mental health court. Some information in this chapter can also be found in Chapter 3 (Confidentiality); chapters 3 and 4 should be read and considered together. Specific information in this chapter includes the participant waiver of rights, the 1st Amendment, 4th Amendment, and 14th Amendment, as well as sanctions and termination. Please also see the [Michigan Court Rules](#) and [Code of Judicial Conduct](#).

In order for a program to become a certified mental health court, it must comply with all of the standards and required best practices in this chapter. All standards and required best practices are in bold.

1. General

a. Standards

- i. **The mental health court may require an individual admitted into the court to pay a reasonable mental health court fee that is reasonably related to the cost to the court for administering the mental health court program as provided in the memorandum of understanding.¹⁰ The clerk of the mental health court shall transmit the fees collected to the treasurer of the local funding unit at the end of each month. (MCL 600.1095(3))**
 - Courts can use the [SCAO Problem-Solving Court Fee Calculator](#) to help determine what a reasonable fee would be.

b. Promising Practice

- i. The mental health court should have an understanding of how imposing a requirement to work may impact a participant's Social Security Income or Social Security Disability Income benefits.

¹⁰ See Appendix I. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/MHC-ProgramMOU.pdf>.

2. Waiver of Rights

a. Standards

- i. If the individual is charged in a criminal case . . . his or her admission to mental health court is subject to all of the following conditions:¹¹
 - The individual waives, in writing, the right to a speedy trial and, with the agreement of the prosecutor, the right to a preliminary examination. (MCL 600.1094(1)(b))
 - The individual signs a written agreement to participate in the mental health court. If the individual is a juvenile or an individual who has been assigned a guardian, the parent or legal guardian is required to sign all documents for the individual's admission in the mental health court. (MCL 600.1094(1)(c))
- ii. The surrendering of any rights by the participant must be done knowingly, voluntarily, and intelligently. (Kelly v Allegan Circuit Judge, 1969)

3. 1st Amendment

a. Standards

- i. Mental health court review hearings must be held open to the public.
 - Although the Sixth Amendment right “is the right of the accused,” a member of the public can invoke the right to a public trial under the First Amendment. (United States Constitution, 1st Amendment and 6th Amendment)
 - The sittings of every court within this state shall be public except that a court may, for good cause shown, exclude from the courtroom other witnesses in the case when they are not testifying and may, in actions involving scandal or immorality, exclude all minors from the courtroom unless the minor is a party or witness. This section shall not apply to cases involving national security. (MCL 600.1420)
 - The party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced, the closure must be no broader than necessary to protect that interest, the trial court must consider reasonable alternatives to closing the proceeding, and it must make findings adequate to support the closure. (People v Vaughn, 2012)

¹¹ See Appendix J. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/MHC-AgreementToParticipate.pdf>.

- ii. **Mental health court conditions of participation, such as area and association restrictions, must be reasonable and must be narrowly drawn.**
 - **Analogizing to probation conditions in MCL 771.3(3)) “. . . a sentencing court must be guided by factors that are lawfully and logically related to the defendant’s rehabilitation.” (People v Johnson (Larry), 1995)**
- iii. **The mandating of an individual to attend Alcoholics Anonymous/ Narcotics Anonymous (AA/NA) is a violation of the First Amendment Establishment Clause prohibitions. The First Amendment applies to the states via the 14th Amendment of the U.S. Constitution. (Hanas v Inner City Christian Outreach, 2008)**

b. Best Practices

- i. **If it is appropriate and beneficial to order 12-step self-help programs, offenders who object to the deity-based 12-step programs cannot be ordered to attend them. In those instances, secular alternatives are made available. (Meyer, 2011)**

4. 4th Amendment

a. Best Practices

- i. The mental health court conducts home visits on participants, without reasonable suspicion, as part of a standard monitoring program.
 - Home visits are a critical function of community supervision. (Harberts, 2011)
 - Home visits as a condition of probation in the absence of reasonable suspicion are justified. (United States vs Reyes, 2002)
 - “[A] home visit is not a search, even though a visit may result in seizure of contraband in plain view.” (United States v Newton, 2002)¹²
- ii. A waiver against unreasonable searches and seizures may be made as a condition of probation.
 - Analogizing to probation law, “a waiver of one’s constitutional protections against unreasonable searches and seizures may properly be made a condition of a probation order where the waiver is reasonably tailored to a defendant’s rehabilitation.” (People v Hellenthal, 1990) (MCL 791.236(19))
 - A warrantless search of a probationer’s home by a probation officer who had reasonable suspicion was upheld based on a ‘special needs’ balancing test. (Griffin v Wisconsin, 1987)

¹² See U.S. v Tessier, U.S. Court of Appeals, Sixth Circuit (02/18/16) citing with favor Reyes, supra; U.S. v LeBlanc, 490 F3d 361, 370 (5th Cir. 2007), upholding less invasive “home visits” where there was no reasonable suspicion.

5. 14th Amendment

a. Standards

- i. There are objective standards that require recusal when “the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable.” (Withrow v Larkin, 1975)**
- ii. Disqualification of a judge is warranted for reasons that include, but are not limited to, the following:**
 - The judge is biased or prejudiced for or against a party or attorney. (MCR 2.003(C)(1)(a))**
 - The judge, based on objective and reasonable perceptions, has either (i) a serious risk of actual bias impacting the due process rights of a party as enunciated in *Caperton v Massey*, [556 US 868]; 129 S Ct 2252; 173 L Ed 2d 1208 (2009), or (ii) has failed to adhere to the appearance of impropriety standard set forth in Canon 2 of the Michigan Code of Judicial Conduct. (MCR 2.003(C)(1)(b))**
 - The judge has personal knowledge of disputed evidentiary facts concerning the proceeding. (MCR 2.003(C)(1)(c))**
- iii. Each mental health court shall determine whether an individual may be admitted to the mental health court. No individual has a right to be admitted into a mental health court. Admission into a mental health court program is at the discretion of the court based on the individual's legal or clinical eligibility. An individual may be admitted to mental health court regardless of prior participation or prior completion status. However, in no case shall a violent offender be admitted into mental health court. (MCL 600.1093(1))**

6. Sanctions and Termination

a. Best Practices

- i. **Mental health court termination hearings and sanction hearings involving a liberty interest and a contest on the facts require procedural protections under due process and under MCR 6.445, including, but not limited to, the following:¹³**
 - **The court must ensure that the participant receives written notice of the alleged violation,**
 - **The court must advise the participant that the participant has a right to contest the charge at a hearing, and**
 - **The court must advise the participant that the participant is entitled to a lawyer's assistance at the hearing and at all subsequent court proceedings, and that the court will appoint a lawyer at public expense if the participant wants one and is financially unable to retain one.**
 - This best practice is based on analogy to due process requirements in termination from probation; supported by several state supreme courts that have ruled on drug court terminations; and it complies with the probation violation rulings in *Gagnon v Scarpelli*, 411 U.S. 778, 92 S.Ct. 1756, 36 L.Ed.2d 656 (1973), and *People v Belanger*, 227 Mich App 637 (1998). See MCR 6.445 for additional information regarding procedural protections under the court rule.

¹³ See Appendix K. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/ModelProgVioAdviceRights.pdf>.

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Chapter 5: The Mental Health Court Team

This chapter discusses the various members on a mental health court team and the importance of collaboration among those members. Specific topics include team composition, roles of team members, participation in staffing meetings and review hearings, and communication and decision-making. The role of the judge is discussed in additional detail in Chapter 1 of this manual. Confidentiality is mentioned briefly here, but discussed in detail in Chapter 3. Various members of the team work to ensure participants' due process rights are protected; best practices regarding due process are discussed in Chapter 4. Teams should also engage in training as a team; training and education are discussed in Chapter 9.

In order for a program to become a certified mental health court, it must comply with all of the standards and required best practices in this chapter. All standards and required best practices are in bold.

1. Team Composition

a. Standards

- i. Programs designed to adhere to the 10 essential elements of a mental health court promulgated by the bureau of justice assistance that include all of the following characteristics:**
 - A team of criminal justice and mental health staff and treatment providers receives special, ongoing training and assists mental health court participants achieve treatment and criminal justice goals by regularly reviewing and revising the court process. (MCL 600.1090(e)(ii)(H))**
- ii. The circuit court or the district court in any judicial circuit or a district court in any judicial district may adopt or institute a mental health court pursuant to statute or court rules. However, if the mental health court will include in its program individuals who may be eligible for discharge and dismissal of an offense, delayed sentence, or deviation from the sentencing guidelines, the circuit or district court shall not adopt or institute the mental health court unless the circuit or district court enters into a memorandum of understanding with each participating prosecuting attorney in the circuit or district court district, a representative or representatives of the community mental health services programs, a representative of the criminal defense bar, and a representative or representatives of community treatment providers. The memorandum of understanding also may include other parties considered necessary, including, but not limited to, a representative or representatives of the local court funding unit or a domestic violence service provider program that receives funding from the state domestic violence prevention and treatment board. The memorandum of understanding shall describe the role of each party.¹⁴ (MCL 600.1091(1))**

¹⁴ See Appendix I. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/MHC-ProgramMOU.pdf>.

b. Best Practices

- i. **A dedicated multidisciplinary team of professionals manages the day-to-day operations of the mental health court, including reviewing participant progress during pre-court staff meetings and status hearings, contributing observations and recommendations within the team members' respective areas of expertise, and overseeing the delivery of legal, treatment, and supervision services. (National Association of Drug Court Professionals, 2015)**
- ii. All court team members attend staffing and court review hearings.
 - Mental health courts that mandated all team members to attend staffing and dockets, even if not directly involved with any clients/defendants, saw a decrease in jurisdictional crime rate. (Bullard, 2014)
- iii. Include probation officers on the mental health court team.
 - Mental health courts that utilized probation officers, frequent home visits, ankle monitors, and frequent but random drug tests saw a decrease in jurisdictional crime rate. (Bullard, 2014)
- iv. The mental health court team comprises representatives from all partner agencies involved in creating the program, including, but not limited to, a judge or judicial officer, program coordinator, prosecutor, defense counsel representative, treatment representative, community supervision officer, and law enforcement officer.
 - Drug courts enjoy significantly greater reductions in recidivism and significantly higher cost savings when all of the above-mentioned team members regularly participate in staffing meetings and review hearings. (Carey, Mackin, & Finigan, 2012) (Cissner, et al., 2013)
 - When law enforcement is a member of the drug court team, drug courts can reduce recidivism by 87 percent and increase cost savings by 44 percent. (Carey, Mackin, & Finigan, 2012)

c. Promising Practices

- i. An independent evaluator serves as a member of the mental health court team.
 - The evaluator is responsible for developing reliable and valid methodologies to study the effectiveness of the drug court. It is necessary for all drug courts to regularly evaluate program effectiveness. This is primarily done through three evaluations: process, outcome, and cost-benefit. While an evaluator is an essential team member of any drug court, is not necessarily a position for a full-time employee in every program. Instead the role can be filled at the regional or local level. The evaluator, while generally considered a part of the drug court team, does not participate in drug court team reviews as it compromises the objectivity of the evaluator and the integrity of the evaluation process. (Minnesota Supreme Court, 2006)

- Courts should consider partnering with local colleges or universities to find a qualified evaluator.
- ii. Communication with a psychiatrist is recommended, especially for those mental health courts whose participants are prescribed psychotropic medications.
- iii. Coordinating services with local advocacy group (National Alliance on Mental Illness) can assist in providing services and enhance connection with treatment and other ancillary services.

2. Staffing Meetings and Review Hearings

a. Standards

- i. **A mental health court shall provide a mental health court participant with all of the following:**
 - **Consistent and close monitoring of the participant and interaction among the court, treatment providers, probation, and the participant. (MCL 600.1096(1)(a))**
 - **Periodic evaluation assessments of the participant's circumstances and progress in the program. (MCL 600.1096(1)(c))**

b. Best Practices

- i. **Team members consistently attend pre-court staff meetings to review participant progress, determine appropriate actions to improve outcomes, and prepare for status hearings in court.**
 - When all team members consistently attend staffing meetings, drug courts can lower recidivism by 50 percent and are nearly twice as cost-effective as those programs where not all team members attend. (Carey, Mackin, & Finigan, 2012)
 - When a representative from treatment attends staffing meetings, recidivism was reduced by 105 percent. (Carey, Mackin, & Finigan, 2012)
- ii. **Team members attend status review hearings on a consistent basis. During the status review hearings, team members contribute relevant information or recommendations when requested by the judge or as necessary to improve outcomes or protect participants' legal rights.**
 - Mental health courts that included a variety of positions in the staffing and court docket saw a decrease in jurisdictional crime rate. (Bullard, 2014)
 - Mental health courts that mandated all court team members attend staffing and dockets, even if not directly involved with any clients/defendants, saw a decrease in jurisdictional crime rate. (Bullard, 2014)

- Drug courts were able to significantly reduce recidivism and improve cost-savings when the judge, attorneys, treatment, probation, and coordinator all attended status review hearings. (Carey, Mackin, & Finigan, 2012)
 - When a representative from treatment attended status review hearings, recidivism was reduced 100 percent over drug courts that did not have a treatment representative attend. (Carey, Mackin, & Finigan, 2012)
 - When a law enforcement officer attended status review hearings, recidivism was reduced 83 percent over drug courts that did not have a law enforcement officer attend. (Carey, Mackin, & Finigan, 2012)
- iii. All court team members attend staffing and court review hearings.
- Mental health courts that mandated all court team members attend staffing and dockets, even if not directly involved with any clients/defendants, saw a decrease in jurisdictional crime rate. (Bullard, 2014)

c. Promising Practices

- i. When pre-court staffing meetings are closed to the participant and the public, the participant should be notified in the mental health court agreement and waiver.

3. Communication and Decision Making

a. Standards

- i. **The judge is the final arbiter of factual controversies and makes the final decision concerning the imposition of incentives or sanctions that affect a participant's legal status or liberty.**
- **The judicial power of the state is vested exclusively in one court of justice, which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction. (Michigan Constitution, Article VI, Section 1)**
 - **In order to continue to participate in and successfully complete a mental health court program, an individual shall comply with all court orders, violations of which may be sanctioned at the court's discretion. (MCL 600.1097(1))**
 - **If the participant is accused of a new crime, the judge shall have the discretion to terminate the participant's participation in the mental health court program. (MCL 600.1097(2))**

b. Best Practices

- i. Team members share information as necessary to appraise participants' progress in treatment and compliance with the conditions of mental health court. Team members and the agency they represent execute memoranda of understanding specifying what information will be shared among team members.¹⁵**
 - Several studies have indicated that participants and staff alike rate communication among team members as one of the most important factors for success in drug court. (National Association of Drug Court Professionals, 2015)
 - Please also see Chapter 3, Confidentiality for information on appropriate scope for information sharing.
- ii. Team members contribute relevant insights, observations, and recommendations based on their professional knowledge, training, and experience. The judge considers all team members' perspectives before making decisions that affect participants' welfare or liberty interests and explains the rationale for such decisions to team members and participants.**
 - Studies in more than 10 drug courts found that implementing a model designed to improve team communication skills increased job satisfaction and improved program measures such as admission rates, wait times for treatment, and no-show rates.¹⁶ (National Association of Drug Court Professionals, 2015)

¹⁵ See Appendix G. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/ConfidentialityMOU.pdf>.

¹⁶ For additional information on the suggested model, the Network for the Improvement of Addiction Treatment's Organizational Improvement Model, please see page 45 of *Adult Drug Court Best Practice Standards*, Volume 2, published by the National Association of Drug Court Professionals. The model seeks to create an environment where all team members are able to share differing views in a way that is likely to be heeded by others on the team.

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Chapter 6: Mental Health Court Population and Admission

This chapter discusses screening and eligibility criteria for mental health courts. It can be used to ensure that programs are targeting the proper population among offenders. Specific topics include screening, eligible offenses, assessments, admission to the program and legal outcomes, and transferring supervision. Mental health courts can use this chapter to address their target population, screening and assessment practices, program eligibility requirements, and admission practices.

In order for a program to become a certified mental health court, it must comply with all of the standards and required best practices in this chapter. All standards and required best practices are in bold.

1. Screening

a. Standards

- i. **To be admitted to a mental health court, an individual shall cooperate with and complete a preadmissions screening and evaluation assessment and shall submit to any future evaluation assessment as directed by the mental health court. A preadmission screening and evaluation assessment shall include all of the following:**
 - **A review of the individual's criminal history. A review of the law enforcement information network may be considered sufficient for purposes of this subdivision unless a further review is warranted. The court may accept other verifiable and reliable information from the prosecution or defense to complete its review and may require the individual to submit a statement as to whether or not he or she has previously been admitted to a mental health court and the results of his or her participation in the prior program or programs. (MCL 600.1093(3)(a))**
 - **An assessment of the risk of danger or harm to the individual, others, or the community. (MCL 600.1093(3)(b))**
 - **A mental health assessment, clinical in nature, and using standardized instruments that have acceptable reliability and validity, meeting diagnostic criteria for serious mental illness, serious emotional disturbance, co-occurring disorder, or developmental disability. (MCL 600.1093(3)(c))**
 - **A review of any special needs or circumstances of the individual that may potentially affect the individual's ability to receive mental health or substance abuse treatment and follow the court's orders. (MCL 600.1093(3)(d))**

- ii. **The court may request that the department of state police provide to the court information contained in the law enforcement information network pertaining to an individual applicant's criminal history for the purposes of determining an individual's eligibility for admission into the mental health court and general criminal history review. (MCL 600.1093(5))**

b. Promising Practices

- i. **A community's treatment capacity for the individual's needs should be taken into account when determining eligibility. (Thompson, 2007)**

2. Eligible Offenses

a. Standards

- i. **Programs designed to adhere to the 10 essential elements of a mental health court promulgated by the bureau of justice assistance that include all of the following characteristics:**
 - **Eligibility criteria that address public safety and a community's treatment capacity, in addition to the availability of alternatives to pretrial detention for defendants with mental illnesses, and that take into account the relationship between mental illness and a defendant's offenses, while allowing the individual circumstances of each case to be considered. (MCL 600.1090(e)(ii)(B))**
- ii. **“Violent offender” means an individual who is currently charged with, or has or has been convicted of, an offense involving the death of, or a serious bodily injury to, any individual, whether or not any of these circumstances are an element of the offense, or with criminal sexual conduct of any degree. (MCL 600.1090(i))**
- iii. **Each mental health court shall determine whether an individual may be admitted to the mental health court. No individual has a right to be admitted into a mental health court. Admission into a mental health court program is at the discretion of the court, based on the individual's legal or clinical eligibility. An individual may be admitted to mental health court regardless of prior participation or prior completion status. However, in no case shall a violent offender be admitted into a mental health court. (MCL 600.1093(1))**

- iv. In addition to admission to a mental health court under this chapter, an individual who is eligible for admission under this chapter may also be admitted to a mental health court under any of the following circumstances:
- The individual has been assigned the status of youthful trainee under section 11 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11. (MCL 600.1093(2)(a))
 - The individual has had criminal proceedings against him or her deferred and has been placed on probation under any of the following:
 - a. Section 7411 of the public health code, 1978 PA 368, MCL 333.7411. (MCL 600.1093(2)(b)(i))
 - b. Section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a. (MCL 600.1093(2)(b)(ii))
 - c. Section 350a or 430 of the Michigan penal code, 1931 PA 328, MCL 750.350a and 750.430. (MCL 600.1063(2)(b)(iii))

3. Clinical Mental Health and Substance Use Assessments

a. Standards

- i. A mental health court may hire or contract with licensed or accredited treatment providers, in consultation with the local community health service provider, and other such appropriate persons to assist the mental health court in fulfilling its requirements under this chapter. (MCL 600.1092)
- ii. To be admitted to a mental health court, an individual shall cooperate with and complete a preadmission screening and evaluation assessment and shall submit to any future evaluation assessment as directed by the mental health court. A preadmission screening and evaluation assessment shall include all of the following:
 - A mental health assessment, clinical in nature, and using standardized instruments that have acceptable reliability and validity, meeting diagnostic criteria for serious mental illness, serious emotional disturbance, co-occurring disorder, or developmental disability. (MCL 600.1093(3)(c))
 - A review of any special needs or circumstances of the individual that may potentially affect the individual's ability to receive mental health or substance abuse treatment and follow the court's orders. (MCL 600.1093(3)(d))

b. Best Practices

- i. Assess clients for the correct program through the use of both mental health and addiction assessment tools.**
 - Courts that had multiple specially tailored treatment options were more successful in reducing jurisdictional recidivism. (Bullard, 2014)
 - Mental health courts that assessed clients for the correct program through the use of both mental health and addiction assessment tools saw a decrease in jurisdictional crime rate. (Bullard, 2014)
- ii. Clinical assessments use validated tools.**
 - The predictive criterion validity of actuarial assessments of major risk and/or need factors greatly exceeds the validity of unstructured clinical judgment. (Andrews, Bonta, & Wormith, 2006)
 - Drug courts that use better assessment practices have better outcomes. (Shaffer, 2010)

4. Risk and Need Assessment

a. Best Practices

- i. The mental health court program accepts participants that are both high-risk and high-need.**
 - Drug courts that focus on high-risk and high-need participants reduce crime nearly twice as much as those focusing on less serious participants. (Lowenkamp, Holsinger, & Latessa, 2005)
- ii. Use a standardized risk and needs assessment to identify the expected likelihood of a particular outcome (e.g., recidivism) over a specified period of time (e.g., one year) for an individual.**
 - Standardized assessment tools are reliable and valid with regard to identifying those who are likely to succeed on probation. (Miller & Shutt, 2001)
 - Providing substance abuse treatment to low-risk offenders can lead to higher rates of recidivism. (Lowenkamp & Latessa, 2004)
 - Exposing low-risk or low-need participants to high-risk or high-need offenders in residential facilities or treatment groups can make their outcomes worse by introducing them to antisocial peers and disrupting their prosocial activities, such as work. (Lowenkamp & Latessa, 2004)
- iii. Ensure that the validation sample of the risk and needs assessment is similar to the mental health court's population.**
 - Different racial or ethnic groups interpret the same assessment questions differently. (Carle, 2009)

- Males and females show differences in the prediction of substance use dependence. (Perez & Wish, 2011)
 - DWI offenders require different assessments than drug court offenders. (Vlavianos, Floerke, Harrison, & Carey, 2015)
- iv. Re-examine dynamic risk factors after program admission.
- Assessments completed within the month preceding the participant's failure have greater accuracy than ones done much earlier. (Lloyd, Hanson, & Serin, 2015)

b. Promising Practice

- i. Identify both clinical and criminogenic risk factors for each individual so these factors may be addressed in the treatment provided. (Luskin, 2015)

5. Legal Outcome

a. Standards

- i. **The circuit court or the district court in any judicial circuit or a district court in any judicial district may adopt or institute a mental health court pursuant to statute or court rules. However, if the mental health court will include in its program individuals who may be eligible for discharge and dismissal of an offense, delayed sentence, or deviation from the sentencing guidelines, the circuit or district court shall not adopt or institute the mental health court unless the circuit or district court enters into a memorandum of understanding with each participating prosecuting attorney in the circuit or district court district, a representative or representatives of the community mental health services programs, a representative of the criminal defense bar, and a representative or representatives of community treatment providers. The memorandum of understanding also may include other parties considered necessary, including, but not limited to, a representative or representatives of the local court funding unit or a domestic violence service provider program that receives funding from the state domestic violence prevention and treatment board. The memorandum of understanding shall describe the role of each party.¹⁷ (MCL 600.1091(1))**
- ii. **Pursuant to the agreement with the individual and prosecutor, the court may either delay further proceedings as provided in section 1 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.1, or proceed to sentencing, as applicable, and place the individual on probation or other court supervision in the mental health court program with terms and conditions according to the agreement and as considered necessary by the court. (MCL 600.1095(1)(b)(iii))**

¹⁷ See Appendix I. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/MHC-ProgramMOU.pdf>.

6. Admission Factors

a. Standards

- i. If the individual is charged in a criminal case . . . his or her admission to mental health court is subject to all of the following conditions:¹⁸**
 - The individual, if an adult, pleads guilty, no contest, or be convicted of any criminal charge on the record . . . (MCL 600.1094(1)(a))**
 - The individual waives, in writing, the right to a speedy trial and, with the agreement of the prosecutor, the right to a preliminary examination. (MCL 600.1094(1)(b))**
 - The individual signs a written agreement to participate in the mental health court. (MCL 600.1094(1)(c))**
- ii. In addition to rights accorded a victim under the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, the mental health court shall permit any victim of the offense or offenses of which the individual is charged . . . as well as any victim of a prior offense of which that individual was convicted . . . to submit a written statement to the court regarding the advisability of admitting the individual into the mental health court. (MCL 600.1094(4))**
- iii. An individual who has waived his or her right to a preliminary examination, who has pled guilty or no contest . . . as part of his or her referral process to a mental health court, and who is subsequently not admitted to a mental health court may withdraw his or her plea and is entitled to a preliminary examination (MCL 600.1094(3))**

b. Best Practices

- i. Use only objective criteria when determining suitability for mental health court.**
 - Subjective screenings after determining legal and clinical eligibility for the drug court program have no beneficial impact on drug court graduation rates or post-program recidivism. (Carey & Perkins, 2008)**
 - Eliminating subjective screening results in cost savings. (Bhati, Roman, & Chalfin, 2008)**

¹⁸ See Appendix J. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/MHC-AgreementToParticipate.pdf>.

7. Informed Choice

a. Best Practices

- i. Inform clients of weekly requirements during each court date.
 - Mental health court team members that give out information on the next upcoming court date, drug testing schedule, homework assignments, and other meeting times to clients in paper form each week in every program phase saw a decrease in jurisdictional crime rate. (Bullard, 2014)

b. Promising Practices

- i. Program should develop guidelines for the identification and expeditious resolution of competency concerns. (Thompson, 2007)

8. Program Entry

a. Standards

- i. **Programs designed to adhere to the 10 essential elements of a mental health court promulgated by the bureau of justice assistance that include all of the following characteristics:**
 - **Participants are identified, referred, and accepted into mental health courts, and then linked to community-based service providers as quickly as possible. (MCL 600.1090(e)(ii)(C))**

b. Best Practices

- ii. Expedite the court process to quickly accept participants into the mental health court.
 - When the time between arrest and program entry is 50 days or less, programs see reductions in recidivism. (Carey, Mackin, & Finigan, 2012)

9. Transfers

a. Standards

- i. A court that has adopted a mental health court under this section may accept participants from any other jurisdiction in this state based upon the residence of the participant in the receiving jurisdiction, the nonavailability of a mental health court in the jurisdiction where the participant is charged, and the availability of financial resources for both operations of the mental health court program and treatment services. A mental health court may refuse to accept participants from other jurisdictions. (MCL 600.1091(3))
- ii. Beginning January 1, 2018, a case may be transferred totally from 1 court to another court for the defendant's participation in a state-certified treatment court. A total transfer may occur prior to or after adjudication, but must not be consummated until the completion and execution of a memorandum of understanding that must include, but need not be limited to, all of the following:¹⁹
 - A detailed statement of how all funds assessed to defendant will be accounted for, including, but not necessarily limited to, the need for a receiving state-certified treatment court to collect funds and remit them to the court of original jurisdiction.
 - A statement providing which court is responsible for providing information to the department of state police, as required under section 3 of 1925 PA 289, MCL 28.243, and forwarding an abstract to the secretary of state for inclusion on the defendant's driving record.
 - A statement providing where jail sanctions or incarceration sentences would be served, as applicable.
 - A statement that the defendant has been determined eligible by and will be accepted into the state-certified treatment court upon transfer.
 - The approval of all of the following:
 - a. The chief judge and assigned judge of the receiving state-certified treatment court and the court of original jurisdiction.
 - b. A prosecuting attorney from the receiving state-certified treatment court and the court of original jurisdiction.
 - c. The defendant.

¹⁹ See Appendix L. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/ModelPSC-TransferJurisdiction.pdf>.

b. Promising Practices

- iii. For transfers under MCL 600.1091(3), use the State Court Administrative Office's recommended procedure to transfer supervision.
 - [Administrative memorandum 2015-01](#) identifies step-by-step procedures for transferring supervision to a problem-solving court. (Administrative Memoranda, 2015)
 - The SCAO provides a [Frequently Asked Questions](#) document to assist courts in dealing with transfers.

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Chapter 7: Drug and Alcohol Testing

This chapter addresses drug and alcohol testing in mental health court. Specific topics include randomization, frequency, methods for collection and testing, the use of scientific information, and chain of custody. In addition to following these standards and best practices, courts should consult the *Ten Principles of a Good Testing Program*,²⁰ promulgated by the National Drug Court Institute. The Michigan Association of Treatment Court Professionals published the [*MATCP Drug Testing Manual, 2nd Edition*](#), as a reference for treatment courts.

In order for a program to become a certified mental health court, it must comply with all of the standards and required best practices in this chapter. All standards and required best practices are in bold.

1. General

a. Standards

- i. **A mental health court shall provide a mental health court participant with all of the following:**
 - **Consistent and close monitoring of the participant and interaction among the court, treatment providers, probation, and the participant. (MCL 600.1096(1)(a))**
 - **If determined by the mental health court to be necessary or appropriate, periodic and random testing for the presence of any nonprescribed controlled substance or alcohol in a participant's blood, urine, or breath, using to the extent practicable the best available, accepted, and scientifically valid methods. (MCL 600.1096(1)(b))**
 - **Periodic evaluation assessments of the participant's circumstances and progress in the program. (MCL 600.1096(1)(c))**
- ii. **Any statement or other information obtained as a result of participating in assessment, treatment, or testing while in a mental health court is confidential and exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be used in a criminal prosecution, unless it reveals criminal acts other than, or inconsistent with, personal controlled substance use. (MCL 600.1096(3))**

²⁰ See Appendix M.

2. Randomization

a. Standards

- i. If determined by the mental health court to be necessary or appropriate, periodic and random testing for the presence of any nonprescribed controlled substance or alcohol in a participant's blood, urine, or breath, using to the extent practicable the best available, accepted, and scientifically valid methods. (MCL 600.1096(1)(b))**

b. Best Practices

- i. The probability of being tested on weekends and holidays is the same as other days.**
 - Weekends and holidays are high-risk times for drug and alcohol use. Providing a respite from detection during these high-risk times reduces the randomness of testing and undermines the central aims of a drug-testing program. (Kirby, Lamb, Iguchi, Husband, & Platt, 1995) (Marlatt & Gordon, 1985) (American Society of Addiction Medicine, 2013)
- ii. Urine tests are delivered no more than eight hours after a participant is notified that a test has been scheduled. (National Association of Drug Court Professionals, 2015) (Auerbach, 2007)**
- iii. Tests with short detection windows such as oral fluid tests should be delivered no more than four hours after being notified that a test was scheduled. (National Association of Drug Court Professionals, 2015)**

3. Frequency and Breadth of Testing

a. Standards

- i. If determined by the mental health court to be necessary or appropriate, periodic and random testing for the presence of any nonprescribed controlled substance or alcohol in a participant's blood, urine, or breath, using to the extent practicable the best available, accepted, and scientifically valid methods. (MCL 600.1096(1)(b))**

b. Best Practices

- i. Test specimens are examined for all unauthorized substances of abuse that are suspected to be used by mental health court participants. Randomly selected specimens are tested periodically for a broader range of substances to detect new substances of abuse that might be emerging in the mental health court population.**
 - Participants can easily evade detection of their substance use by switching to drugs that have similar effects but are not detected by the test. (American Society of Addiction Medicine, 2013)

- Because new drugs of abuse are constantly being sought out by offenders to cheat drug tests, drug courts should frequently and randomly examine samples for a wide range of potential substances of abuse. (American Society of Addiction Medicine, 2013)
- ii. Drug and alcohol tests are conducted at least once per week.
 - Mental health courts that tested new clients at least once a week, if not more, saw a decrease in jurisdictional crime rate. (Bullard, 2014)
- iii. Provide multiple testing locations for mental health court participants to drug and alcohol test.
 - Mental health courts that had multiple drug testing sites that included testing on weekends and holidays, saw a decrease in jurisdictional crime rate. (Bullard, 2014)
- iv. Identify triggers and circumstances of potential use.
 - Mental health courts that had team members who made sure to point out any days noted for probable drug use at staffing and drug tested clients relative to that probable date saw a decrease in jurisdictional crime rate. (Bullard, 2014)
- v. Tests that measure substance use over extended periods of time, such as ankle monitors, are applied for at least 90 consecutive days, followed by urine or other intermittent test methods.
 - Research indicates that use of an alcohol tether device may deter alcohol consumption and alcohol-impaired driving among recidivist DWI offenders if it is worn for at least 90 days. (Flango & Cheeseman, 2009) (Tison, Nichols, Casanova-Powell, & Chaudhary, 2015)
 - Mental health courts that used ankle monitors to monitor difficult clients saw a decrease in jurisdictional crime rate. Ankle monitors included global positioning system (GPS) trackers and/or alcohol monitors. (Bullard, 2014)

c. Promising Practices

- i. Drug and alcohol testing continues uninterrupted to determine whether relapse occurs as other treatment and supervision services are adjusted.
 - Although research has not occurred on this issue, logic dictates that continued testing provides the greatest assurance that participants remain abstinent. (National Association of Drug Court Professionals, 2015)
- ii. Mental health courts take into account participants' medication side effects and symptomology of the mental illness when drug testing.

4. Scientifically Valid Drug Testing Methods

a. Standards

- i. A mental health court shall provide a mental health court participant with all of the following:
 - If determined by the mental health court to be necessary or appropriate, periodic and random testing for the presence of any nonprescribed controlled substance or alcohol in a participant's blood, urine, or breath, using to the extent practicable the best available, accepted, and scientifically valid methods. (MCL 600.1096(1)(c))
- ii. If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case. (Michigan Rules of Evidence, Rule 702. Adopted from the Federal Rules of Evidence, Rule 702. Based on *Daubert v. Merrell Dow Pharmaceuticals*)

b. Best Practices

- i. A mental health court uses scientifically valid and reliable testing procedures.
 - To be admissible as evidence in a legal proceeding, drug and alcohol test results must be derived from scientifically valid and reliable methods. (Meyer, 2011)
 - Appellate courts have recognized the scientific validity of several commonly used methods for analyzing urine, including gas chromatography/mass spectrometry (GC/MS); liquid chromatography/tandem mass spectrometry (LC/MS/MS); the enzyme multiple immunoassay technique (EMIT); and some sweat, oral fluid, hair, and ankle-monitor tests. (Meyer, 2011)
 - Appellate courts have recognized the scientific validity of ethyl glucuronide (ETG) testing. (Lawrence)
- ii. If a participant denies substance use in response to a positive screening test, a portion of the same specimen is subjected to confirmatory analysis using an instrumented test, such as GC/MS or LC/MS. Unless a participant admits to using the drug identified by the screening procedure, confirmation of presumptive positive tests is mandatory.
 - Gas chromatography-mass spectrometry (GC-MS) provides chemical fingerprint identification of drugs and is recognized as the definitive confirmation technology. (Cary, 2011)

- Confirmation with an instrumented test virtually eliminates the odds of a false positive result, assuming the sample was collected and stored properly. (Auerbach, 2007)
 - It is necessary to validate positive screening results in order to rule out the potential of a false positive by performing a confirmation procedure. (Cary, 2011)
- iii. **Confirmatory tests are not withheld due to the participant's inability to pay.**
- Drug courts commonly require participants to pay the cost of confirmation tests if the initial screening result is confirmed. (Cary, 2011) (Meyer, 2011)
- iv. **Metabolite levels are not used as evidence of new substance use or changes in participants' substance use patterns.**
- Quantitative metabolite levels can vary considerably based on a number of factors, including the total fluid content in urine or blood. (Cary, 2004)
 - Numeric results do not accurately discriminate between whether a participant's overall drug level is increasing or decreasing, even if compared to previous urine drug concentrations from the same client and for the same drug. (Cary, 2004)
 - The routine use of urine drug levels by court personnel in an effort to define substance abuse behavior and formulate appropriately measured sanctions is a practice that can result in inappropriate, factually unsupportable conclusions, and a decision-making process that lacks a sound scientific foundation. (Cary, 2011)
- v. **Test specimens are examined routinely for evidence of dilution and adulteration.**
- The temperature of each urine specimen should be examined immediately upon collection. An unusual temperature might suggest adulteration or tampering. (National Association of Drug Court Professionals, 2015)
 - Under normal conditions, urine specimens should be between 90 and 100 degrees Fahrenheit within four minutes of collection; a lower or higher temperature likely indicates a deliberate attempt at deception. (American Society of Addiction Medicine, 2013)
 - Specimens should be tested for creatinine and specific gravity. A creatinine level below 20 mg/dL is rare and is a reliable indicator of an intentional effort at dilution or excessive fluid consumption. (American Society of Addiction Medicine, 2013)

5. Witnessed Collection

a. Standards

- i. The person taking the sample shall be of the same sex as the offender providing the sample, unless an emergency condition requires otherwise. (Michigan Department of Corrections Policy Directive 03.03.115)**
- ii. Breathalyzers must be calibrated according to certification standards established by the U.S. Departments of Transportation (DOT) and Health and Human Services (HHS) and/or the state toxicologist. The test must be administered by breath alcohol technicians who are trained in the use and interpretation of breath alcohol results. (U.S. Department of Justice, Office of Justice Programs, Drug Courts Program Office & American University, 2000)**

b. Best Practices

- i. Collection of test specimens is witnessed directly by a staff person who has been trained to prevent tampering and substitution of fraudulent specimens.**
 - The most effective way to ensure that the sample collection is valid and to avoid tampering is to ensure the collection is witnessed directly by someone who has been properly trained. (American Society of Addiction Medicine, 2013) (Cary, 2011)

c. Promising Practices

- i. Barring exigent circumstances, participants are not permitted to undergo independent drug or alcohol testing in lieu of being tested by trained personnel assigned to or authorized by the mental health court.**
 - In an effort to refute court-mandated drug-testing results, on occasion, clients may attempt to obtain testing from alternative sources not under the court's control or supervision. (Cary, 2011)
 - The success of any drug court will depend, in part, on the reliable monitoring of substance use. (National Association of Drug Court Professionals, 2015)

6. Chain of Custody and Results

a. Standards

- i. **If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case. (Michigan Rules of Evidence, Rule 702. Adopted from the Federal Rules of Evidence, Rule 702. Based on *Daubert v. Merrell Dow Pharmaceuticals*)**
- ii. **Under Rule 702, mental health courts are required to follow generally accepted chain-of-custody procedures when handling test specimens. (Meyer, 2011)**

b. Best Practices

- i. **A chain-of-custody form is completed once a urine sample has been collected. This form ensures the identity and integrity of the sample through transport, testing and reporting of results. (Kadehjian, 2010)**
- ii. Test results, including the results of confirmation testing, are available to the mental health court within 48 hours of sample collection.
 - A study of approximately 70 drug courts reported significantly greater reductions in criminal recidivism and significantly greater cost benefits when the teams received drug and alcohol test results within 48 hours of sample collection. (Carey, Mackin, & Finigan, 2012)

c. Promising Practices

- i. In order to comply with the 48-hour results best practice, mental courts that use alcohol tethers or in-home units should require download at least three times per week.

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Chapter 8: Treatment

This chapter discusses treatment in mental health court. Specific topics include treatment entry, services, treatment duration, and medication-assisted treatment. Some of the topics in this chapter are also addressed in chapter 2 regarding participant supervision and compliance and in chapter 6 regarding population and admission.

In order for a program to become a certified mental health court, it must comply with all of the standards and required best practices in this chapter. All standards and required best practices are in bold.

1. General and Definition of Mental Health Courts

a. Standards

- i. **“Mental health court” means any of the following:**
 - **A court-supervised treatment program for individuals who are diagnosed by a mental health professional with having a serious mental illness, serious emotional disturbance, co-occurring disorder, or developmental disability. (MCL 600.1090(e)(i))**
 - **Programs designed to adhere to the 10 essential elements of a mental health court promulgated by the bureau of justice assistance that include all of the following characteristics:**
 - a. **Eligibility criteria that address public safety and a community’s treatment capacity, in addition to the availability of alternatives to pretrial detention for defendants with mental illnesses, and that take into account the relationship between mental illness and a defendant’s offenses, while allowing for individual circumstances of each case to be considered. (MCL 600.1090(e)(ii)(B))**

b. Best Practices

- i. **A clinically trained treatment representative is a core member of the mental health court team and regularly attends team meetings and status hearings.**
 - Recidivism may be reduced twofold when representatives from the drug court’s primary treatment agencies regularly attend staffing meetings and status review hearings. (Carey, Mackin, & Finigan, 2012)
- ii. Use multiple treatment facilities that allow for tailored treatment options for individual clients.
 - Mental health courts that were able to create extremely specialized classes and treatment saw a decrease in jurisdictional crime rate. (Bullard, 2014)

- iii. Treatment should address major criminogenic needs. Eight major criminogenic needs have been identified that contribute to the risk for recidivism among offenders and that are dynamic, or changeable via programmatic interventions.
 - Reductions in recidivism are proportional to the number of criminogenic needs addressed within offender treatment programs. (Peters, 2011)

2. Treatment Entry

a. Standard

- i. **Programs designed to adhere to the 10 essential elements of a mental health court promulgated by the bureau of justice assistance that include all of the following characteristics:**
 - **Participants are identified, referred, and accepted into mental health courts, and then linked to community-based service providers as quickly as possible. (MCL 600.1090(e)(ii)(C))**
- ii. **Nothing in this chapter shall be construed to preclude a court from providing mental health services to an individual before he or she enters a plea and is accepted into the mental health court. (MCL 600.1094(2))**

b. Best Practices

- i. **Mental health courts link participants to treatment as soon as possible.**
 - The initial placement of offenders with mental illness into the mental health court program, despite co-occurring substance abuse and alcohol issues, lead to a rapid connection of clients to needed treatment and a decrease in jurisdictional crime rate. (Bullard, 2014)
 - People mandated to treatment by the criminal justice system experience similar outcomes related to substance abuse and recidivism as those seeking treatment voluntarily. Retention in treatment is often higher among those coerced into treatment. Such participants perform as well as voluntary participants across a range of in-treatment indicators of progress (e.g., self-efficacy, coping skills, clinical symptoms, 12-step involvement, motivation for change). (Peters, 2011)
 - Participants who enter drug court quickly tend to enter treatment more quickly. (Worcel, Furrer, Green, & Rhodes, 2006)
- ii. **Mental health courts should consider using the Risk Needs Responsivity (RNR) Model.**
 - The RNR model has led to better risk assessment instruments to predict criminal behavior and better treatment programs that match services to the level of risk and needs. As a result, the RNR model, when properly applied, has led to a reduction in recidivism. (Bonta & Andrews, 2007)

3. Treatment Services and Models

a. Standards

- i. A mental health court shall provide a mental health court participant with all of the following:**
 - **Periodic evaluation assessments of the participant's circumstances and progress in the program. (MCL 600.1096(1)(c))**
 - **Mental health services, substance use disorder services, education, and vocational opportunities as appropriate and practicable. (MCL 600.1096(1)(e))**
- ii. Programs designed to adhere to the 10 essential elements of a mental health court promulgated by the bureau of justice assistance that include all of the following characteristics:**
 - **Connect participants to comprehensive and individualized treatment supports and services in the community and strive to use, and increase the availability of, treatment and services that are evidence based. (MCL 600.1090(e)(ii)(F))**

b. Best Practices

- i. Participants receive psychiatric medication to treat serious mental health symptoms.**
 - **Psychiatric medication decreased the odds of negative termination. (Linhorst, 2015)**
 - **Participants who were prescribed psychiatric medications were seven times more likely to graduate successfully from drug court than participants with mental health symptoms who did not receive psychiatric medication. (Marlowe, 2016)**
- ii. Mental health courts provided specialized classes and treatment options.**
 - **Courts that prioritized intensive monitoring, tailored treatment options, and additional program supports saw a decrease in jurisdictional crime rates. (Bullard, 2014)**
- iii. The mental health court offers a continuum of care for substance abuse treatment, including detoxification, residential, sober living, day treatment, intensive outpatient, and outpatient services.**
 - **Outcomes, including graduation rates and recidivism, are significantly better in drug courts that offer a continuum of care for substance abuse treatment that includes residential treatment and recovery housing in addition to outpatient treatment. (Carey, Mackin, & Finigan, 2012) (Koob, Brocato, & Kleinpeter, 2011)**
 - **Community aftercare treatment for offenders can significantly reduce rates of substance use and recidivism. (Peters, 2011)**

- iv. The mental health court offers trauma-informed services.
 - Please see Section F of Chapter VI in the [National Association of Drug Court Professionals Adult Drug Court Best Practice Standards, Volume II](#). (National Association of Drug Court Professionals, 2015)
- v. The mental health court offers gender-specific substance abuse treatment groups.
 - A study of approximately 70 drug courts found that programs offering gender-specific services reduced criminal recidivism significantly more than those that did not. (Carey, Mackin, & Finigan, 2012)
- vi. Participants are not incarcerated to achieve clinical or social service objectives such as obtaining access to detoxification services or sober living quarters.
 - Relying on in-custody substance abuse treatment can reduce the cost-effectiveness of a drug court by as much as 45 percent. (Carey, Mackin, & Finigan, 2012)
 - Some drug courts may place participants in jail as a means of providing detoxification services or to keep them “off the streets” when adequate treatment is unavailable in the community. This practice is inconsistent with best practices, unduly costly, and unlikely to produce lasting benefits. (National Association of Drug Court Professionals, 2013, p. 42)

c. Promising Practices

- i. Treatment utilizes practices to address the criminal justice offender:
 - Cognitive Behavioral Treatment Targeted to Criminogenic Risks (e.g., Reasoning and Rehabilitation or Thinking for a Change)
 - Forensic Peer Specialists
 - Person Centered Planning
- ii. Treatment offers integrated treatment to address mental health issues with co-occurring substance abuse issues when possible.

4. Evidence-Based Models of Treatment

a. Best Practices

- i. **Treatment providers use evidence-based models and administer treatments that are documented in manuals and have been demonstrated to improve outcomes for addicted persons involved in the criminal justice system.**
 - Outcomes from correctional rehabilitation are significantly better when evidence-based models are used, and fidelity to the model is maintained through continuous supervision of the treatment providers. (National Association of Drug Court Professionals, 2013)

- Examples of manualized cognitive behavioral therapy (CBT) curricula that have been proven to reduce criminal recidivism among offenders include Moral Reconciliation Therapy (MRT), Reasoning and Rehabilitation (R&R), Thinking for a Change (T4C), relapse prevention therapy (RPT), and the Matrix Model. (National Association of Drug Court Professionals, 2013)
- ii. Participants receive psychiatric medication to treat serious mental health symptoms.
 - Participants who were prescribed psychiatric medication decreased the odds of negative termination. (Linhorst, 2015)
 - Participants with mental health symptoms who were prescribed psychiatric medications were seven times more likely to graduate successfully from drug court than participants with mental health symptoms who did not receive psychiatric medication. (Marlowe, 2016)

5. Treatment Duration

a. Best Practices

- i. **Participants receive a sufficient dosage and duration of treatment to address their needs.**
 - Remaining in treatment for one year successfully engaged people with mental illness. (Denckla, 2001)
 - Providing continuous treatment for at least one year is associated with reduced recidivism. (Warren, 2007)
 - The longer participants remain in treatment and the more sessions they attend, the better their outcomes. (National Association of Drug Court Professionals, 2013)
- ii. Participants ordinarily receive 6 to 10 hours of counseling per week during the initial phase of treatment and approximately 200 hours of counseling over 9 to 12 months; however, the mental health court allows for flexibility to accommodate individual differences in each participant's response to treatment.
 - The best outcomes are achieved when addicted offenders complete a course of treatment extending over approximately 9 to 12 months. (Peters, 2011) (Cobbina & Huebner, 2007)
 - Assuming drug courts are treating individuals who are addicted to drugs or alcohol, and are at a high risk for criminal recidivism or treatment failure; studies show that on average, participants will require 6 to 10 hours of counseling per week in the first phase and 200 hours over the course of treatment. (National Association of Drug Court Professionals, 2013)

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Chapter 9: Education

Education and training are important components in any mental health court. This chapter discusses standards, best practices, and promising practices regarding education and training of the mental health court team.

In order for a program to become a certified mental health court, it must comply with all of the standards and required best practices in this chapter. All standards and required best practices are in bold.

1. General

a. Standards

- i. **Programs designed to adhere to the 10 essential elements of a mental health court promulgated by the bureau of justice assistance that include all of the following characteristics:**
 - **A team of criminal justice and mental health staff and treatment providers receives special, ongoing training and assists mental health court participants achieve treatment and criminal justice goals by regularly reviewing and revising the court process. (MCL 600.1090(e)(ii)(H))**

b. Best Practices

- i. **Team members participate in continuing education workshops to gain up-to-date knowledge about best practices on mental health court topics.**
 - A multisite study involving more than 60 drug courts found that participation in annual training conferences was the single greatest predictor of program effectiveness. (Shaffer, 2006) (Shaffer, 2010)
- ii. **New team members complete a formal training or orientation as soon as practical after assuming their position.**
 - Drug courts where new hires complete a formal training or orientation program were able to reduce recidivism by 54 percent over those who did not engage in such practices. (Carey, Mackin, & Finigan, 2012)
- iii. **The mental health court judge attends current training events on legal and constitutional issues in mental health courts, judicial ethics, evidence-based substance abuse and mental health treatment, behavior modification, and community supervision. Attendance at annual training conferences and workshops ensures contemporary knowledge about advances in the mental health court field.**
 - Because judges have such a substantial impact on outcomes in drug court, continued training is especially important. (Carey, Mackin, & Finigan, 2012)

- iv. **Mental health professionals on the mental health court team are familiar with legal terminology and the criminal justice system, and criminal justice personnel on the team are familiar with treatment practices and protocols.**
 - Mental health court professionals must familiarize themselves with legal terminology and the workings of the criminal justice system, just as criminal justice personnel must learn about treatment practices and protocols. (Thompson, 2007)
- v. Before starting a mental health court, team members attend a formal pre-implementation training to learn from expert faculty about best practices in mental health courts and develop fair and effective policies and procedures for the program.
 - In drug courts where the teams participated in formal training prior to implementation, cost savings increased by two and a half times, and the programs were 50 percent more effective at reducing recidivism. (Carey, Pukstas, Waller, Mackin, & Finigan, 2008) (Carey, Mackin, & Finigan, 2012)
 - Drug courts that did not receive pre-implementation training had outcomes that were only negligibly different from traditional criminal justice programming. (Carey, Pukstas, Waller, Mackin, & Finigan, 2008)

c. Promising Practices

- i. Mental health court team members should attend the annual Michigan Association of Treatment Court Professionals conference.
- ii. Mental health court team members should attend appropriate trainings offered by the State Court Administrative Office, Michigan Association of Community Mental Health Boards, or trainings offered on co-occurring disorders by Michigan Certification Board for Addictions Professionals.

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Chapter 10: Program Evaluation

This chapter addresses program evaluation of a mental health court. Specific topics include collection and maintenance of information, evaluation, and program modification.

In order for a program to become a certified mental health court, it must comply with all of the standards and required best practices in this chapter. All standards and required best practices are in bold.

1. Collection and Maintenance of Information

a. Standards

- i. **Each mental health court shall collect and provide data on each individual applicant and participant and the entire program as required by the state court administrative office. The state court administrative office shall provide appropriate training to all courts entering data, as directed by the supreme court. (MCL 600.1099(1))**
- ii. **Each mental health court shall maintain files or databases on each individual participant in the program for review and evaluation as well as treatment, as directed by the state court administrative office. The information collected for evaluation purposes must include a minimum standard data set²¹ developed and specified by the state court administrative office. (MCL 600.1099(2))**

b. Best Practices

- i. Mental health courts should maintain program data for evaluation purposes in an electronic database rather than paper files.
 - Drug courts are 65 percent more cost effective when they enter data for evaluations into an electronic database rather than storing it in paper files. (Carey, Mackin, & Finigan, 2012)
 - Michigan's Drug Court Case Management Information System can be accessed at <https://dccmis.micourt.org/default.aspx>.

²¹ See Appendix N. The minimum standard data set for Michigan mental health courts is also available at <http://courts.mi.gov/Administration/SCAO/OfficesPrograms/Documents/SpecialtyCourts/MentalHealthCourtDataStandards.pdf>.

2. Evaluation and Program Modification

a. Best Practices

- i. **Use data to monitor program operations on a consistent basis and make program changes where necessary.**
 - In programs where staff monitor the internal operations of their program on a consistent basis and make necessary program modifications, the programs reduced recidivism 105 percent and were 131 percent more cost effective than programs that did not. (Carey, Mackin, & Finigan, 2012)
- ii. Enlist the services of independent evaluators and implement appropriate recommended changes.
 - Programs that had external independent evaluators review their program and suggest changes and then implemented those changes were 100 percent more effective at reducing cost and 85 percent more effective in reducing recidivism than programs that did not. (Carey, Mackin, & Finigan, 2012)

b. Promising Practices

- i. Evaluate short-term outcomes frequently while participants are enrolled in the program.
 - The National Center for State Courts developed a list of performance measures ([Mental Health Court Performance Measures Implementation and User's Guide](#)) that mental health courts can use to measure their efficiency, efficacy, and achievement of program goals.
- ii. Independent evaluators should examine your program's three to five year performance outcomes at least once every five years.
 - External evaluators should examine recidivism three years to five years after participants' program admission. Program admission should be the latest start date for the evaluation because that is when the drug court becomes capable of influencing participant behavior. (National Association of Drug Court Professionals, 2015)
 - While no specific research exists with regard to how frequently a program should be evaluated, a new evaluation is warranted when a program significantly changes its operations or has staff turnover. (National Association of Drug Court Professionals, 2015)

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Appendix A

Michigan Mental Health Court Statute

600.1090 Definitions.

As used in this chapter:

- (a) "Co-occurring disorder" means having 1 or more disorders relating to the use of alcohol or other controlled substances of abuse as well as any serious mental illness, serious emotional disturbance, or developmental disability. A diagnosis of co-occurring disorders occurs when at least 1 disorder of each type can be established independent of the other and is not simply a cluster of symptoms resulting from 1 disorder.
- (b) "Court funding unit" means that term as defined in section 151e of the revised judicature act of 1961, 1961 PA 236, MCL 600.151e.
- (c) "Developmental disability" means that term as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a.
- (d) "Domestic violence offense" means any crime alleged to have been committed by an individual against his or her spouse or former spouse, an individual with whom he or she has a child in common, an individual with whom he or she has had a dating relationship, or an individual who resides or has resided in the same household.
- (e) "Mental health court" means any of the following:
 - (i) A court-supervised treatment program for individuals who are diagnosed by a mental health professional with having a serious mental illness, serious emotional disturbance, co-occurring disorder, or developmental disability.
 - (ii) Programs designed to adhere to the 10 essential elements of a mental health court promulgated by the bureau of justice assistance that include all of the following characteristics:
 - (A) A broad-based group of stakeholders representing the criminal justice system, mental health system, substance abuse treatment system, any related systems, and the community guide the planning and administration of the court.
 - (B) Eligibility criteria that address public safety and a community's treatment capacity, in addition to the availability of alternatives to pretrial detention for defendants with mental illnesses, and that take into account the relationship between mental illness and a defendant's offenses, while allowing the individual circumstances of each case to be considered.
 - (C) Participants are identified, referred, and accepted into mental health courts, and then linked to community-based service providers as quickly as possible.
 - (D) Terms of participation are clear, promote public safety, facilitate the defendant's engagement in treatment, are individualized to correspond to the level of risk that each defendant presents to the community, and provide for positive legal outcomes for those individuals who successfully complete the program.
 - (E) In accordance with the Michigan indigent defense commission act, 2013 PA 93, MCL 780.981 to 780.1003, provide legal counsel to indigent defendants to explain program requirements, including voluntary participation, and guides defendants in decisions about program involvement. Procedures exist in the mental health court to address, in a timely fashion, concerns about a defendant's competency whenever they arise.

(F) Connect participants to comprehensive and individualized treatment supports and services in the community and strive to use, and increase the availability of, treatment and services that are evidence based.

(G) Health and legal information are shared in a manner that protects potential participants' confidentiality rights as mental health consumers and their constitutional rights as defendants. Information gathered as part of the participants' court-ordered treatment program or services are safeguarded from public disclosure in the event that participants are returned to traditional court processing.

(H) A team of criminal justice and mental health staff and treatment providers receives special, ongoing training and assists mental health court participants achieve treatment and criminal justice goals by regularly reviewing and revising the court process.

(I) Criminal justice and mental health staff collaboratively monitor participants' adherence to court conditions, offer individualized graduated incentives and sanctions, and modify treatment as necessary to promote public safety and participants' recovery.

(J) Data are collected and analyzed to demonstrate the impact of the mental health court, its performance is assessed periodically, and procedures are modified accordingly, court processes are institutionalized, and support for the court in the community is cultivated and expanded.

(f) "Participant" means an individual who is admitted into a mental health court.

(g) "Serious emotional disturbance" means that term as defined in section 100d of the mental health code, 1974 PA 258, MCL 330.1100d.

(h) "Serious mental illness" means that term as defined in section 100d of the mental health code, 1974 PA 258, MCL 330.1100d.

(i) "Violent offender" means an individual who is currently charged with, or has been convicted of, an offense involving the death of, or a serious bodily injury to, any individual, whether or not any of these circumstances are an element of the offense, or with criminal sexual conduct in any degree.

600.1091 Mental health court; juvenile mental health court; memorandum of understanding; participants from other jurisdictions; certification by state court administrative office required.

(1) The circuit court or the district court in any judicial circuit or a district court in any judicial district may adopt or institute a mental health court pursuant to statute or court rules. However, if the mental health court will include in its program individuals who may be eligible for discharge and dismissal of an offense, delayed sentence, or deviation from the sentencing guidelines, the circuit or district court shall not adopt or institute the mental health court unless the circuit or district court enters into a memorandum of understanding with each participating prosecuting attorney in the circuit or district court district, a representative or representatives of the community mental health services programs, a representative of the criminal defense bar, and a representative or representatives of community treatment providers. The memorandum of understanding also may include other parties considered necessary, including, but not limited to, a representative or representatives of the local court funding unit or a domestic violence service provider program that receives funding from the state domestic violence prevention and treatment board. The memorandum of understanding must describe the role of each party.

(2) A family division of circuit court in any judicial circuit may adopt or institute a juvenile mental health court pursuant to statute or court rules. The creation or existence of a mental health court does not change the statutes or court rules concerning discharge or dismissal of an offense, or a delayed sentence or deferred entry of judgment. A family division of circuit court adopting or instituting a juvenile mental health court shall enter into a memorandum of understanding with all participating prosecuting authorities in the circuit or district court, a representative or representatives of the community mental health services program, a representative of the criminal defense bar specializing in juvenile law, and a representative or representatives of community treatment providers that describes the roles and responsibilities of each party to the memorandum of understanding. The memorandum of understanding also may include other parties considered necessary, including, but not limited to, a representative or representatives of the local court funding unit or a domestic violence service provider program that receives funding from the state domestic violence prevention and treatment board. The memorandum of understanding must describe the role of each party. A juvenile mental health court is subject to the same procedures and requirements provided in this chapter for a mental health court created under subsection (1), except as specifically provided otherwise in this chapter.

(3) A court that has adopted a mental health court under this section may accept participants from any other jurisdiction in this state based upon the residence of the participant in the receiving jurisdiction, the nonavailability of a mental health court in the jurisdiction where the participant is charged, and the availability of financial resources for both operations of the mental health court program and treatment services. A mental health court may refuse to accept participants from other jurisdictions.

(4) Beginning January 1, 2018, a mental health court operating in this state, or a circuit court in any judicial circuit or the district court in any judicial district seeking to adopt or institute a mental health court, must be certified by the state court administrative office. The state court administrative office shall establish the procedure for certification. Approval and certification under this subsection of a mental health court is required to begin or to continue the operation of a mental health court under this chapter. The state court administrative office shall not recognize and include a mental health court that is not certified under this subsection on the statewide official list of mental health courts. The state court administrative office shall include a mental health court certified under this subsection on the statewide official list of mental health courts. A mental health court that is not certified under this subsection shall not perform any of the functions of a mental health court, including, but not limited to, any of the following functions:

- (a) Charging a fee under section 1095.
- (b) Discharging and dismissing a case as provided in section 1098.
- (c) Receiving funding under section 1099a.

600.1092 Hiring or contracting with treatment providers.

A mental health court may hire or contract with licensed or accredited treatment providers, in consultation with the local community mental health service provider, and other such appropriate persons to assist the mental health court in fulfilling its requirements under this chapter.

600.1093 Admission to mental health court.

(1) Each mental health court shall determine whether an individual may be admitted to the mental health court. No individual has a right to be admitted into a mental health court. Admission into a mental health court program is at the discretion of the court based on the

individual's legal or clinical eligibility. An individual may be admitted to mental health court regardless of prior participation or prior completion status. However, in no case shall a violent offender be admitted into mental health court.

(2) In addition to admission to a mental health court under this chapter, an individual who is eligible for admission under this chapter may also be admitted to a mental health court under any of the following circumstances:

(a) The individual has been assigned the status of youthful trainee under section 11 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11.

(b) The individual has had criminal proceedings against him or her deferred and has been placed on probation under any of the following:

(i) Section 7411 of the public health code, 1978 PA 368, MCL 333.7411.

(ii) Section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a.

(iii) Section 350a or 430 of the Michigan penal code, 1931 PA 328, MCL 750.350a and 750.430.

(3) To be admitted to a mental health court, an individual shall cooperate with and complete a preadmission screening and evaluation assessment and shall submit to any future evaluation assessment as directed by the mental health court. A preadmission screening and evaluation assessment shall include all of the following:

(a) A review of the individual's criminal history. A review of the law enforcement information network may be considered sufficient for purposes of this subdivision unless a further review is warranted. The court may accept other verifiable and reliable information from the prosecution or defense to complete its review and may require the individual to submit a statement as to whether or not he or she has previously been admitted to a mental health court and the results of his or her participation in the prior program or programs.

(b) An assessment of the risk of danger or harm to the individual, others, or the community.

(c) A mental health assessment, clinical in nature, and using standardized instruments that have acceptable reliability and validity, meeting diagnostic criteria for a serious mental illness, serious emotional disturbance, co-occurring disorder, or developmental disability.

(d) A review of any special needs or circumstances of the individual that may potentially affect the individual's ability to receive mental health or substance abuse treatment and follow the court's orders.

(e) For a juvenile, an assessment of the juvenile's family situation, including, to the extent practicable, a comparable review of any guardians or parents.

(4) Except as otherwise permitted in this chapter, any statement or other information obtained as a result of participating in a preadmission screening and evaluation assessment under subsection (3) is confidential and is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be used in a criminal prosecution, unless it reveals criminal acts other than, or inconsistent with, personal drug use.

(5) The court may request that the department of state police provide to the court information contained in the law enforcement information network pertaining to an individual applicant's criminal history for the purposes of determining an individual's eligibility for admission into the mental health court and general criminal history review.

600.1094 Admission to mental health court of individual charged in criminal case; conditions; mental health services before entry of plea; withdrawal of plea; additional rights of victim under William Van Regenmorter crime victim's rights act.

(1) If the individual is charged in a criminal case or, in the case of a juvenile, is alleged to have engaged in activity that would constitute a criminal act if committed by an adult, his or her admission to mental health court is subject to all of the following conditions:

- (a) The individual, if an adult, pleads guilty, no contest, or be convicted of any criminal charge on the record. The individual, if a juvenile, admits responsibility for the violation or violations that he or she is accused of having committed.
- (b) The individual waives, in writing, the right to a speedy trial and, with the agreement of the prosecutor, the right to a preliminary examination.
- (c) The individual signs a written agreement to participate in the mental health court. If the individual is a juvenile or an individual who has been assigned a guardian, the parent or legal guardian is required to sign all documents for the individual's admission in the mental health court.

(2) Nothing in this chapter shall be construed to preclude a court from providing mental health services to an individual before he or she enters a plea and is accepted into the mental health court.

(3) An individual who has waived his or her right to a preliminary examination, who has pled guilty or no contest or, in the case of a juvenile, has admitted responsibility, as part of his or her referral process to a mental health court, and who is subsequently not admitted to a mental health court may withdraw his or her plea and is entitled to a preliminary examination or, in the case of a juvenile, may withdraw his or her admission of responsibility.

(4) In addition to rights accorded a victim under the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, the mental health court shall permit any victim of the offense or offenses of which the individual is charged or, in the case of a juvenile, any victim of the activity that the individual is alleged to have committed and that would constitute a criminal act if committed by an adult, as well as any victim of a prior offense of which that individual was convicted or, in the case of a juvenile, a prior offense for which the individual has been found responsible, to submit a written statement to the court regarding the advisability of admitting the individual into the mental health court.

600.1095 Admission to mental health court; requirements; jurisdiction; fee.

(1) Upon admitting an individual into a mental health court, all of the following apply:

- (a) For an individual who is admitted to a mental health court based upon having criminal charges currently filed against him or her and who has not already pled guilty or no contest or, in the case of a juvenile, has not admitted responsibility, the court shall accept the plea of guilty or no contest or, in the case of a juvenile, the admission of responsibility.
- (b) For an individual who pled guilty or no contest to, or admitted responsibility for, criminal charges for which he or she was admitted into the mental health court, the court shall do either of the following:
 - (i) In the case of an individual who pled guilty or no contest to criminal offenses that are not traffic offenses and who may be eligible for discharge and dismissal under the agreement for which he or she was admitted into mental health court upon successful completion of the mental health court program, the court shall not

enter a judgment of guilt or, in the case of a juvenile, shall not enter an adjudication of responsibility.

(ii) In the case of an individual who pled guilty to a traffic offense or who pled guilty to an offense but may not be eligible for discharge and dismissal pursuant to the agreement with the court and prosecutor upon successful completion of the mental health court program, the court shall enter a judgment of guilt or, in the case of a juvenile, shall enter an adjudication of responsibility.

(iii) Pursuant to the agreement with the individual and the prosecutor, the court may either delay further proceedings as provided in section 1 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.1, or proceed to sentencing, as applicable, and place the individual on probation or other court supervision in the mental health court program with terms and conditions according to the agreement and as considered necessary by the court.

(2) Unless a memorandum of understanding made pursuant to section 1088 between a receiving mental health court and the court of original jurisdiction provides otherwise, the original court of jurisdiction maintains jurisdiction over the mental health court participant as provided in this chapter until final disposition of the case, but not longer than the probation period fixed under section 2 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.2. In the case of a juvenile participant, the court may obtain jurisdiction over the juvenile's parents or guardians in order to assist in ensuring the juvenile's continued participation and successful completion of the mental health court and may issue and enforce any appropriate and necessary order regarding the parent or guardian.

(3) The mental health court may require an individual admitted into the court to pay a reasonable mental health court fee that is reasonably related to the cost to the court for administering the mental health court program as provided in the memorandum of understanding. The clerk of the mental health court shall transmit the fees collected to the treasurer of the local funding unit at the end of each month.

600.1096 Services provided by mental health court; exit evaluation; confidentiality of information obtained from assessment, treatment, or testing.

(1) A mental health court shall provide a mental health court participant with all of the following:

(a) Consistent and close monitoring of the participant and interaction among the court, treatment providers, probation, and the participant.

(b) If determined by the mental health court to be necessary or appropriate, periodic and random testing for the presence of any nonprescribed controlled substance or alcohol in a participant's blood, urine, or breath, using to the extent practicable the best available, accepted, and scientifically valid methods.

(c) Periodic evaluation assessments of the participant's circumstances and progress in the program.

(d) A regimen or strategy of appropriate and graduated but immediate rewards for compliance and sanctions for noncompliance, including, but not limited to, the possibility of incarceration or confinement.

(e) Mental health services, substance use disorder services, education, and vocational opportunities as appropriate and practicable.

(2) Upon an individual's completion of the required mental health court program participation, an exit evaluation should be conducted in order to assess the individual's continuing need for mental health, developmental disability, or substance abuse services.

(3) Any statement or other information obtained as a result of participating in assessment, treatment, or testing while in a mental health court is confidential and is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be used in a criminal prosecution, unless it reveals criminal acts other than, or inconsistent with, personal controlled substance use.

600.1097 Participation in and completion of mental health court program; compliance with court orders; accusation of new crime; judge discretion to terminate; payment of costs; objection to written individual plan of services; notice.

(1) In order to continue to participate in and successfully complete a mental health court program, an individual shall comply with all court orders, violations of which may be sanctioned at the court's discretion.

(2) If the participant is accused of a new crime, the judge shall have the discretion to terminate the participant's participation in the mental health court program.

(3) The court shall require that a participant pay all court fines, court costs, court fees, restitution, and assessments and pay all, or make substantial contributions toward payment of, the costs of the treatment and the mental health court program services provided to the participant, including, but not limited to, the costs of drug or alcohol testing or counseling. However, except as otherwise provided by law, if the court determines that the payment of court fines, court fees, or drug or alcohol testing expenses under this subsection would be a substantial hardship for the individual or would interfere with the individual's treatment, the court may waive all or part of those court fines, court fees, or drug or alcohol testing expenses. The cost of treatment shall be governed by chapter 8 of the mental health code, 1974 PA 258, MCL 330.1800 to 330.1842, if applicable.

(4) The responsible mental health agency shall notify the court of a participant's formal objection to his or her written individual plan of services developed under section 712(2) of the mental health code, 1974 PA 258, MCL 330.1712. However, the court is not obligated to take any action in response to a notice received under this subsection.

600.1098 Successful completion or termination; findings on the record or statement in court file; applicable law; discharge and dismissal of proceedings; criteria; discharge and dismissal of domestic violence offense; circumstances; discharge and dismissal under subsection (3); duties of court upon successful completion of probation or court supervision; termination or failure of participant to complete program; duties of court; records closed to public inspection and exempt from disclosure.

(1) Upon completion or termination of the mental health court program, the court shall find on the record or place a written statement in the court file indicating whether the participant completed the program successfully or whether the individual's participation in the program was terminated and, if it was terminated, the reason for the termination.

(2) If an individual is participating in a mental health court under section 11 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11, section 7411 of the public health code, 1978 PA 368, MCL 333.7411, section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a, or section 350a or 430 of the Michigan penal code, 1931 PA 328, MCL

750.350a and 750.430, the court shall proceed under the applicable section of law. There may only be 1 discharge or dismissal under this subsection.

(3) Except as provided in subsection (4), the court, with the agreement of the prosecutor and in conformity with the terms and conditions of the memorandum of understanding under section 1091, may discharge and dismiss the proceedings against an individual who meets all of the following criteria:

- (a) The individual has participated in a mental health court for the first time.
- (b) The individual has successfully completed the terms and conditions of the mental health court program.
- (c) The individual is not required by law to be sentenced to a correctional facility for the crimes to which he or she has pled guilty.
- (d) The individual has not previously been subject to more than 1 of the following:
 - (i) Assignment to the status of youthful trainee under section 11 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11.
 - (ii) The dismissal of criminal proceedings against the individual under section 7411 of the public health code, 1978 PA 368, MCL 333.7411, section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a, or section 350a or 430 of the Michigan penal code, 1931 PA 328, MCL 750.350a and 750.430.

(4) The court may order a discharge and dismissal of a domestic violence offense only if all of the following circumstances apply:

- (a) The individual has not previously had proceedings dismissed under section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a.
- (b) The domestic violence offense is eligible to be dismissed under section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a.
- (c) The individual fulfills the terms and conditions imposed under section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a, and the discharge and dismissal of proceedings are processed and reported under section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a.

(5) A discharge and dismissal under subsection (3) shall be without adjudication of guilt or, for a juvenile, without adjudication of responsibility and are not a conviction or a finding of responsibility for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime or, for a juvenile, a finding of responsibility. There may only be 1 discharge and dismissal under subsection (3) for an individual. The court shall send a record of the discharge and dismissal to the criminal justice information center of the department of state police, and the department of state police shall enter that information into the law enforcement information network with an indication of participation by the individual in a mental health court. All records of the proceedings regarding the participation of the individual in the mental health court under subsection (3) are closed to public inspection from the date of deferral and are exempt from public disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, but shall be open to the courts of this state, another state, or the United States, the department of corrections, law enforcement personnel, and prosecutors only for use in the performance of their duties or to determine whether an employee of the court, department, law enforcement agency, or prosecutor's office has violated his or her conditions of employment or whether an applicant meets criteria for employment with the court, department, law enforcement agency, or prosecutor's office. The records and identifications division of the

department of state police shall retain a nonpublic record of an arrest, court proceedings, and the discharge and dismissal under this subsection.

(6) Except as provided in subsection (2), (3), or (4), if an individual has successfully completed probation or other court supervision, the court shall do the following:

(a) If the court has not already entered an adjudication of guilt or responsibility, enter an adjudication of guilt or, in the case of a juvenile, enter a finding or adjudication of responsibility.

(b) If the court has not already sentenced the individual, proceed to sentencing or, in the case of a juvenile, disposition pursuant to the agreement.

(c) Send a record of the conviction and sentence or the finding or adjudication of responsibility and disposition to the criminal justice information center of the department of state police.

(7) For a participant whose participation is terminated or who fails to successfully complete the mental health court program, the court shall enter an adjudication of guilt, or, in the case of a juvenile, a finding of responsibility, if the entry of guilt or adjudication of responsibility was delayed or deferred under section 1094, and shall then proceed to sentencing or disposition of the individual for the original charges to which the individual pled guilty or, in the case of a juvenile, to which the juvenile admitted responsibility prior to admission to the mental health court.

Except for program termination due to the commission of a new crime, failure to complete a mental health court program shall not be a prejudicial factor in sentencing. All records of the proceedings regarding the participation of the individual in the mental health court shall remain closed to public inspection and exempt from public disclosure as provided in subsection (5).

600.1099 Mental health court; collection of data; maintenance of files or databases; standards; disclosure.

(1) Each mental health court shall collect and provide data on each individual applicant and participant and the entire program as required by the state court administrative office. The state court administrative office shall provide appropriate training to all courts entering data, as directed by the supreme court.

(2) Each mental health court shall maintain files or databases on each individual participant in the program for review and evaluation as well as treatment, as directed by the state court administrative office. The information collected for evaluation purposes must include a minimum standard data set developed and specified by the state court administrative office.

(3) As directed by the supreme court, the state court administrative office shall provide standards for mental health courts in this state, including, but not limited to, developing a list of approved measurement instruments and indicators for data collection and evaluation. These standards must provide comparability between programs and their outcomes.

(4) The information collected under this section regarding individual applicants to mental health court programs for the purpose of application to that program and participants who have successfully completed mental health courts is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

600.1099a Mental health court; expenditure of funds by supreme court; quarterly reports; advisory committee; technical and training assistance.

(1) The supreme court is responsible for the expenditure of state funds for the establishment and operation of mental health courts.

(2) Each mental health court shall report quarterly to the state court administrative office in a manner prescribed by the state court administrative office on the state funds received and expended by that mental health court.

(3) The state court administrative office may establish an advisory committee. If established, this committee shall be separate from and independent of the state's drug treatment court advisory committee.

(4) As directed by the supreme court, the state court administrative office shall, in conjunction with the department of community health, assure that training and technical assistance are available and provided to all mental health courts.

Appendix B

Model Mental Health Court Discharge Statement

STATE OF MICHIGAN [court number and type]	MHC Program Discharge ²²	CASE NO. [case/file number]
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In the matter of:	[defendant name and DOB] [defendant address]
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On this [number] day of [month], [year] the defendant:

- ☐ Successfully completed the MHC program
- ☐ Voluntarily withdrew from the program
- ☐ Was discharged from the program as unsuccessful due to:
 - ☐ Violation of the program
 - ☐ Conviction of new criminal charges
 - ☐ Being a risk to public safety
 - ☐ Other: [specify]

P	_____
Honorable [name of MHC judge]	Date

²² This model document is provided by SCAO as a resource and for informational purposes only to facilitate the operation of problem solving courts by local units of government and courts in compliance with statutory requirements. SCAO's sharing this model document is not intended (and cannot be construed) as legal advice.

Since there might be a delay in updating the model document on the web page and updating the model document in this manual, the most up-to-date version of the model document is always available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/MHC-DischargeStatment.pdf>

Appendix C

Model Multi-Party Consent for Release of Information

[Name of problem solving court] Multiple-Party Consent for Release of Information²³

Participant's Full Name: _____

DOB: _____

I authorize the following parties:

1. [Name of problem solving court]
2. [Name of county] MDOC
3. [Name of district court] probation department
4. [Name of county] prosecutor's office
5. [Name of treatment agency]
6. [Name of law enforcement agency]
7. [Name of law firm/office, or name of defense attorney on team]
8. [Name of drug and alcohol testing agency]
9. [Name of electronic monitoring agency]
10. [Name of county] Office of Community Corrections

If information is authorized to be released to a party under a general designation, the participant (or other individual authorized to sign in lieu of the participant), understands that, upon request and consistent with this part, the [name of problem solving court] program will provide a list of entities to which their information has been disclosed pursuant to the general designation (see § 2.13(d)).

To Communicate with and disclose to one another the following information:

INFORMATION TO BE SHARED

1. Name, address, and other personal identifying information of the participant.
2. [Name of problem solving court] program assessments (GAIN, COMPAS, risk and needs, etc.).
3. [Name of problem solving court] program behavior summaries and updates.

²³ This model document is provided by SCAO as a resource to assist problem-solving courts in complying with a standard for certification. It is not intended to be legal advice or to include all federal confidentiality requirements.

Since there might be a delay in updating the model document on the web page and updating the model document in this manual, the most up-to-date version of the model document is always available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/ReleaseInfoMultiParty.pdf>

4. Treatment information, including assessments, attendance, progress and compliance reports, treatment plans and discharge summaries.
5. Drug and alcohol screening, testing, confirmation results, and payment information.
6. Health information.
7. Reportable communicable disease information, including HIV, sexually transmitted infections, hepatitis, and tuberculosis.
8. Health plan or health benefits information.
9. Electronic monitoring information, including compliance and payment information.
10. Other (specify, if any): _____

Note: I authorize all of the foregoing information to be shared unless I indicate here, by number, one or more categories of information not to be shared: _____

PURPOSE OF USE AND DISCLOSURE

The purposes for the disclosures authorized by this form are:

1. To assess the participant's need for substance use, mental health, or developmental disabilities services and treatment.
2. To provide, manage, and coordinate **[name of problem solving court]** program and substance use, mental health, and developmental disabilities services and treatment for the participant.
3. To develop a Person-Centered Plan, Service Plan, and/or Treatment Plan for the participant.
4. To make dispositional recommendations for a court-involved participant.
5. To monitor payment for services, and establish financial assistance if determined necessary.
6. To improve service and treatment outcomes for participants involved in the **[name of problem solving court]** program.
7. Other (please specify): _____

REDISCLASURE AND CONFIDENTIALITY

Once health care information is disclosed pursuant to this signed authorization, I understand that the federal health privacy law (45 CFR, Parts 160 and 164) protecting health information may not apply to the recipient of the information and, therefore, may not prohibit the recipient from redisclosing information to others. However, substance-abuse treatment information protected by federal law (42 CFR, Part 2), shall remain confidential and must not be redisclosed by the recipient except as authorized by those laws or this authorization. The federal rules restrict any use of this information to criminally investigate or prosecute any alcohol or drug abuse patient.

CONSENT EXPIRATION

The date, event, or condition upon which consent expires must ensure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given.

This consent for release of information shall expire upon my successful graduation from the problem solving court program; or upon termination for violation of the [name of problem solving court] terms or upon a date certain for other specified reasons.

CONFIDENTIALITY RIGHTS

Federal law protects the confidentiality of treatment records under 42 CFR, Section 2.1 through Section 2.67; and Section 290dd-2. This means that:

1. Treatment information is ordinarily kept confidential.
2. Review hearings are held in open and public courtrooms, and although the court attempts to minimize confidential information in court, it is possible that an observer could connect a participant's identity with the fact that he or she is in treatment as a condition of participation in the **[name of problem solving court]** or that confidential information may be revealed. I specifically consent to a potential disclosure to third persons.
3. Staffing meetings, which are held before review hearings, are typically closed to the public. Confidential information may be discussed by the **[name of problem solving court]** team members at a staffing meeting. I understand that if a non-team member is invited to participate in a staffing meeting they must receive my consent prior to observation.
4. If I refuse to consent to disclosure or attempt to revoke my consent prior to the expiration of this consent such action is grounds for immediate termination from the **[name of problem solving court]**.
5. It is a crime to violate confidentiality requirements, and the participant may report such violations to Michigan's attorney general at 517-373-1110.
6. Notwithstanding this confidentiality requirement, covered information may be released under specified circumstances **[insert list of specific circumstances]**, and may include medical emergency, crimes on the premises, crimes against staff, administration/qualified service providers working with the **[name of problem solving court]**, and outside auditors, central registries and researchers).
7. Federal law does not protect information relating to the abuse or neglect of a child, state child abuse laws, court orders signed pursuant to 42 CFR part 2 for release of specific information, state laws relating to cause of death and duty to protect others, and to warn of serious imminent harm.

I acknowledge that I have been advised of my rights, have received a copy of the advisement, and have had the benefit of legal counsel or have voluntarily waived the right to an attorney. I am not under the influence of drugs or alcohol. I fully understand my rights and I am signing this Consent voluntarily.

SIGNATURE CONSENTING TO RELEASE OF INFORMATION

Participant signature

Date

Staff witness signature

Date

Staff witness printed name

**SIGNATURE CONFIRMING PARTICIPANT WAS ADVISED OF CONFIDENTIALITY
RIGHTS BOTH VERBALLY AND IN WRITING**

Participant signature

Date

Staff witness signature

Date

Staff witness printed name

Parts of this form were adapted from:

Mark F Botts, L. B. (2015, April 7). *<https://www.sog.unc.edu/publications/reports/north-carolina-juvenile-justice-%E2%80%93-behavioral-health-information-sharing-guide>*. Retrieved April 11, 2018, from <https://www.sog.unc.edu>:
<https://www.sog.unc.edu/sites/www.sog.unc.edu/files/Information%20Sharing%20Guide%20FINAL%20PDF%20to%20authors%202015-06-25.pdf>

Appendix D

Model Notice of Prohibition Against Redisclosure

[Name of problem solving court program] Notice of Prohibition Against Redisclosure²⁴

Disclosure of any participant's confidential information that is made by a team member may only be made if there is a signed consent to release information form on file and it must be accompanied by one of the following written statements:

- (1) This information has been disclosed to you from records protected by federal confidentiality rules (42 CFR, Part 2). The federal rules prohibit you from making any further disclosure of information in this record that identifies a patient as having or having had a substance use disorder either directly, by reference to publicly available information, or through verification of such identification by another person unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosed or as otherwise permitted by 42 CFR, Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose (see § 2.31). The federal rules restrict any use of the information to investigate or prosecute with regard to a crime any patient with a substance use disorder, except as provided at §§ 2.12(c)(5) and 2.65; or
- (2) 42 CFR, Part 2 prohibits unauthorized disclosure of these records.

²⁴ This model document is provided by SCAO as a resource to assist problem-solving courts in complying with a standard for certification. It is not intended to be legal advice or to include all federal confidentiality requirements.

Since there might be a delay in updating the model document on the web page and updating the model document in this manual, the most up-to-date version of the model document is always available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/NoticeProhibitionAgainstRedisclosure.pdf>

Appendix E

Model Confidentiality Policies and Procedures

[Name of drug court program] Policies and Procedures Regarding Access to and Use of Written and Electronic Confidential Records²⁵

I. Access and Use of Written and Electronic Confidential Records within the Drug Court Team

- a. Except as otherwise permitted in the Michigan Drug Court Statute, any statement or other information obtained as a result of participating in a preadmission screening and evaluation assessment is confidential and is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be used in a criminal prosecution, unless it reveals criminal acts other than, or inconsistent with, personal drug use.
- b. Confidential treatment court information and records may not be used to initiate or to substantiate any criminal charges against a participant or to conduct any investigation of a participant.
- c. Records of participants may only be released to parties listed on a signed up-to-date release of information form. Records may only be released if the requested record is listed as information that may be shared.
- d. Any documented treatment information disclosed under a signed consent to release information, shall be accompanied by the **[name of drug court program]** Notice of Prohibition against Redisclosure.
- e. **[Name of drug court program]** written/paper program files shall be kept in a locked filing cabinet in **[name of secure location]**, with access limited to authorized individuals.
- f. Precourt staffing meeting reports shall be returned to the **[name of drug court]** program coordinator upon conclusion of the meeting.
- g. All users of the DCCMIS shall sign a DCCMIS user agreement prior to being assigned a username and password.
- h. Electronic data that is subject to confidentiality standards is protected by security walls and is password protected. Access is limited, and disclosure/redisclosure is subject to approval by the treatment court judge and team.

²⁵ This model document is provided by SCAO as a resource to assist problem-solving courts in complying with a standard for certification. It is not intended to be legal advice or to include all federal confidentiality requirements.

Since there might be a delay in updating the model document on the web page and updating the model document in this manual, the most up-to-date version of the model document is always available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/ConfidentialityPP.pdf>

- i. Upon expiration of consent for release of information written/paper program files shall be moved to **[name of secure location with restricted access]** and shall be kept in a locked filing cabinet.
- j. Upon expiration of consent for release of information confidential records on computers are protected by changing the password or other access.

II. Access and Use of Written and Electronic Confidential Records Outside of the Drug Court Team

- a. Generally, unless access to a file is restricted by statute, court rule or an order pursuant to MCR 8.119(I), any person may inspect pleadings and other papers in a court clerk's office and may obtain copies as provided in MCR 8.119(J).
- b. Responses to all requests for access to nonpublic and limited-access records shall be made per the following resources:
 - i. Michigan Trial Court Case File Management Standards - Component 19, Providing Public Access to Records
 - ii. Chart of Nonpublic and Limited-Access Court Records
 - iii. Michigan Supreme Court Administrative Order 2006-2 - Privacy Policy and Access to Records
 - iv. SCAO Administrative Memorandum 2006-04 - Privacy Policy and Access to Records
- c. Staffing meetings may be observed by staff from other courts for the purpose of planning their own drug court program, and by SCAO staff. All observers of the meeting shall sign a confidentiality agreement prior to the start of the meeting, and all participants discussed at the meeting must sign a **[name of drug court program]** consent to release information, with the observing parties listed, prior to the staffing meeting.

Appendix F

Model DCCMIS User Confidentiality Agreement

DCCMIS User Confidentiality Agreement²⁶

This Confidentiality Agreement applies to **[name of drug court program]**'s employees, members of the **[name of drug court program]** team, and **[name of other drug court program DCCMIS users, such as evaluator]** hereinafter referred to as "users", who have direct access to the Drug Court Case Management Information System (DCCMIS).

User understands and agrees:

- All network passwords are confidential and shall not be disclosed to any third party including other authorized users of the DCCMIS.
- The **[name of problem solving court program]** DCCMIS administrator shall provide user with the network password necessary to gain access to the DCCMIS network.
- In the event that user reasonably suspects or becomes aware of any unauthorized use or disclosure of user's network password or other confidential user identification, user shall immediately change the password, and shall immediately report the unauthorized use or disclosure to **[name of problem solving court program]**'s DCCMIS administrator .
- **[Name of problem solving court program]**'s DCCMIS administrator, The State Court Administrative Office (SCAO), and Advanced Computer Technologies (ACT) shall have the right to suspend or revoke user's network access without notice in the event of any breach or suspected breach of confidentiality.
- To be accountable for all entries of client information, orders and data entered by user into DCCMIS under user's password.
- To access client information and/or records only for the following purposes in accordance with applicable state and federal laws and regulations:
 - coordinating services with ancillary and other treatment service providers;
 - reviewing client's progress in program areas as needed per user's role on the team;
 - conducting statistical research, or audits;
 - conducting quality assurance, or review activities;
 - For DCCMIS administrators requirements involving verification and other operational purposes.

²⁶ This model document is provided by SCAO as a resource and for informational purposes only to facilitate the operation of problem solving courts by local units of government and courts in compliance with statutory requirements. SCAO's sharing this model document is not intended (and cannot be construed) as legal advice.

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- To not disclose or re-disclose any client information and/or records to any other entity or individual without the prior written authorization of the participant or the participant's authorized representative.
- SCAO and ACT may conduct unannounced audits of user's access to its information systems, software applications, network and data on a periodic basis to monitor appropriate use of and compliance with the obligations stated above.
- Any violation of participant confidentiality may result in termination of access to DCCMIS.
- Information may be disclosed in summary, statistical, or other form, which does not directly or indirectly identify particular drug court participants or related parties.

I understand that alcohol and/or drug treatment records and mental health records are protected under the Federal regulations governing Confidentiality and Drug Abuse Patient Records, 42 CFR, Part 2, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR, Parts 160 & 164, and cannot be disclosed without the written consent of the **[name of program]** participant or a person legally authorized to represent the participant unless otherwise provided for by the regulations.

Signature of DCCMIS user

Date

Printed name of DCCMIS user

Attached: Penalties under 42 CFR Part 2 and Penalties under HIPAA

Penalties Under 42CFR Part 2

§2.3 Purpose and effect.

(a) *Purpose.* Under the statutory provisions quoted in §§2.1 and 2.2, these regulations impose restrictions upon the disclosure and use of alcohol and drug abuse patient records which are maintained in connection with the performance of any federally assisted alcohol and drug abuse program. The regulations specify:

- (1) Definitions, applicability, and general restrictions in subpart B (definitions applicable to §2.34 only appear in that section);
- (2) Disclosures which may be made with written patient consent and the form of the written consent in subpart C;
- (3) Disclosures which may be made without written patient consent or an authorizing court order in subpart D; and
- (4) Disclosures and uses of patient records which may be made with an authorizing court order and the procedures and criteria for the entry and scope of those orders in subpart E.

(b) *Effect.* (1) These regulations prohibit the disclosure and use of patient records unless certain circumstances exist. If any circumstance exists under which disclosure is permitted, that circumstance acts to remove the prohibition on disclosure but it does not compel disclosure. Thus, the regulations do not require disclosure under any circumstances.

(2) These regulations are not intended to direct the manner in which substantive functions such as research, treatment, and evaluation are carried out. They are intended to insure that an alcohol or drug abuse patient in a federally assisted alcohol or drug abuse program is not made more vulnerable by reason of the availability of his or her patient record than an individual who has an alcohol or drug problem and who does not seek treatment.

(3) Because there is a criminal penalty (a fine—see 42 U.S.C. 290dd-2, and 42 CFR 2.4) for violating the regulations, they are to be construed strictly in favor of the potential violator in the same manner as a criminal statute (see *M. Kraus & Brothers v. United States*, 327 U.S. 614, 621–22, 66 S. Ct. 705, 707–08 (1946)).

§2.4 Criminal penalty for violation.

Under 42 U.S.C. [42 U.S.C. 290dd](#)–2, any person who violates any provision of those statutes or these regulations shall be fined not more than \$500 in the case of a first offense, and not more than \$5,000 in the case of each subsequent offense.

§2.5 Reports of violations.

- (a) The report of any violation of these regulations may be directed to the United States Attorney for the judicial district in which the violation occurs.
- (b) The report of any violation of these regulations by a methadone program may be directed to the Regional Offices of the Food and Drug Administration.

Penalties Under HIPAA

42USC1320d-5 General penalty for failure to comply with requirements and standards

(a) General penalty

(1) In general

Except as provided in subsection (b), the Secretary shall impose on any person who violates a provision of this part a penalty of not more than \$100 for each such violation, except that the total amount imposed on the person for all violations of an identical requirement or prohibition during a calendar year may not exceed \$25,000.

42USC1320d-6 Wrongful disclosure of individually identifiable health information

(a) Offense

A person who knowingly and in violation of this part-

- (1) uses or causes to be used a unique health identifier;
- (2) obtains individually identifiable health information relating to an individual; or
- (3) discloses individually identifiable health information to another person,

shall be punished as provided in subsection (b).

(b) Penalties

A person described in subsection (a) shall-

- (1) be fined not more than \$50,000, imprisoned not more than 1 year, or both;
- (2) if the offense is committed under false pretenses, be fined not more than \$100,000, imprisoned not more than 5 years, or both; and
- (3) if the offense is committed with intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm, be fined not more than \$250,000, imprisoned not more than 10 years, or both.

Appendix G

Model Confidentiality MOU

[Name of problem solving court]

Memorandum of Understanding Regarding Confidentiality²⁷

I. Parties

This agreement facilitates the exchange of information between parties of the agreement in order to effectively coordinate services and provide oversight to participants involved in the criminal justice and treatment systems. It is made and entered into as of the date set forth below, by and between the following parties whose representatives have signed the agreement:

- 1. [Name of problem solving court]**
- 2. [Name of county] MDOC**
- 3. [Name of district court] probation department**
- 4. [Name of county] prosecutor's office**
- 5. [Name of treatment agency]**
- 6. [Name of law enforcement agency]**
- 7. [Name of law firm/office, or name of defense attorney on team]**
- 8. [Name of drug and alcohol testing agency]**
- 9. [Name of electronic monitoring agency]**
- 10. [Name of county] Office of Community Corrections**

II. Purposes

Whereas, all parties are committed to ensuring that clients involved with both the criminal justice and treatment systems are afforded appropriate levels of treatment, with the least burdensome delivery of services;

Whereas, the privacy and confidentiality of information regarding clients involved with the criminal justice and treatment systems is an important legal and ethical obligation;

Whereas, all parties are committed to improving cooperation, integration, and collaboration at the service delivery, administrative, and evaluative levels for the benefit of clients involved with both the criminal justice and treatment systems;

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<http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/ConfidentialityMOU.pdf>

Whereas, all parties agree that improvements to the quality and effectiveness of services can be supported by the sharing of relevant and necessary information;

Whereas, all parties agree that the exchange of information between criminal justice and treatment systems is allowable and encouraged within the parameters of 42 CFR, Part 2, and 45 CFR, Parts 160 and 164;

Whereas, all parties mutually agree that this agreement shall be interpreted in light of, and consistent with governing state and federal laws;

Whereas, all parties agree that information identifying the clients or any information regarding client treatment should be shared pursuant to a validly executed Consent to Release Information and only to the degree it is necessary for the recipient of the information to perform his or her role; and that information shared for evaluation of the quality and effectiveness of services will be used when protections of the client's identity have been utilized;

Now, therefore, the parties agree that this memorandum of understanding reflects their understanding and agreement as to the permitted and prohibited sharing and uses of information in the legal process.

III. Definitions

1. "Criminal justice information" or "criminal justice records" means any information, whether recorded or not, relating to an individual's involvement with the criminal justice system, including confidential records and files maintained by clerks of the court, law enforcement agencies, court probation departments, and the Michigan Department of Corrections.
2. "Confidential information" means any information, whether recorded or not, relating to an individual served by a substance use, mental health, or developmental disabilities service provider that is received in connection with the performance of any treating provider relationship.
3. "Treatment provider" means any person or entity at one location whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation of substance users, the mentally ill, or the developmentally disabled.
4. "Community mental health services provider" or "CMHSP" means an area mental health, developmental disabilities, and substance use disorder authority that is responsible for the management and oversight of the public system of mental health, developmental disabilities, and substance use services at the community level and that is under contract with the Department of Health and Human Services to operate the combined Medicaid Waiver program authorized under Section 1915(b) and Section 1915(c) of the Social Security Act.
5. "Community-based provider" means any person or entity whose purpose is to provide, support engagement in, and/or coordinate services for the care of a participant, which

may include assessment, treatment, community service, education, employment, or recreational activities.

6. “Disclose” or “disclosure” means a communication of patient identifying information, the affirmative verification or denial of another person’s communication of patient identifying information, or the communication of any information from the record of a patient who has been identified.

IV. Each of the Parties agrees to:

1. Promote a mutual understanding of the allowances and limitations outlined in 42 CFR, Part 2, and 45 CFR, Parts 160 and 164, and other applicable state and federal laws;
2. Work together with the other agencies listed in this MOU to facilitate information sharing and to ensure that confidential information is disseminated only to the appropriate persons or agencies as provided by law or otherwise pursuant to a lawfully obtained consent form;
3. Share information as necessary, and in compliance with 42 CFR and HIPAA, to appraise participants’ progress in, and compliance with, the conditions of the **[name of problem solving court program]**.
4. Train relevant staff in procedures for interagency collaboration and information sharing;
5. Comply with relevant state and federal law and other applicable local rules and ethical standards, which relate to records use, dissemination, and retention/destruction;
6. Comply with relevant state and federal law and other applicable local rules and ethical standards, which relate to the dissemination of information, whether written or oral.
7. Only disclose a participant’s confidential information if there is a signed consent to release information form on file and it is accompanied by one of the following written statements:
 - a. This information has been disclosed to you from records protected by federal confidentiality rules (42 CFR, Part 2). The federal rules prohibit you from making any further disclosure of information in this record that identifies a patient as having or having had a substance use disorder either directly, by reference to publicly available information, or through verification of such identification by another person unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosed or as otherwise permitted by 42 CFR, Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose (see § 2.31). The federal rules restrict any use of the information to investigate or prosecute with regard to

- a crime any patient with a substance use disorder, except as provided at §§ 2.12(c)(5) and 2.65; or
- b. 42 CFR, Part 2 prohibits unauthorized disclosure of these records.

8. Develop appropriate internal written policies to ensure that confidential information concerning clients is disseminated only to appropriate personnel.

V. The [name of problem solving court program] agrees to:

1. Share criminal justice information with any party to this agreement, pursuant to a court order or the written consent of the client in order to assess the client's needs and develop an appropriate service or treatment plan for the client.
2. Share criminal justice information with any party to this agreement, upon request and to the extent permitted by state and federal law and regulations, for the protection of the client and others.
3. Maintain the confidentiality of criminal justice records and limit disclosure of confidential information concerning clients only to authorized persons.
4. Ensure that any statements made by a client during evaluation and intake are protected, pursuant to the client's privilege against self-incrimination and right to counsel under the Fifth and Sixth Amendments to the United States Constitution, and MCL 600.1064(4).
5. Ensure that no presentencing report or risk and needs assessment is completed prior to an entry of a guilty plea without the written consent of the client, or the client's attorney.
6. Share sentencing information as appropriate with other parties to this agreement, as necessary, in order to comply with any evaluation, assessment, or treatment, ordered by the court.
7. Ensure that criminal justice records maintained by the court are retained and destroyed, in accordance with MCL 399.5, MCL 600.1428, MCL 691.1101, MCR 3.925, MCR 8.119(K).
8. Maintain in accordance with 42 CFR, Part 2, and 45 CFR, Parts 160 and 164, as applicable, the confidentiality of substance use, mental health, and developmental disabilities services information obtained from an entity whose client information is governed by 42 CFR, Part 2, or 45 CFR, Parts 160 and 164, which includes substance use, mental health, or developmental disabilities services providers and community mental health service providers.
9. Use and disclose substance use, mental health, or developmental disabilities information acquired pursuant to an "[name of problem solving court program] Consent for Release of Information" (or any valid Consent for Release of Information) only as

permitted by the terms of the executed Consent for Release of Information form, unless otherwise permitted or required by law.

10. Abide by 42 CFR, Part 2, Sec 2.32, which prohibits redisclosure of substance use disorder information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR, Part 2.
11. Ensure that information obtained pursuant to the problem solving court agreement and the program's Consent for Release of Information will not be used to initiate or substantiate any criminal charges against a participant except as otherwise authorized by 42 CFR, Part 2, Section 2.12(d)(1).

VI. Each Treatment Provider, whether providing assessment/evaluation/diagnostic services or treatment services, or both agrees to:

1. Disclose confidential information to any party of this agreement who is designated on a validly executed “[name of problem solving court program] Consent for Release of Information” (or any other valid consent for Release of Information form) in accordance with the terms and limitations of the Consent for Release of Information form.
2. Share criminal justice information with any party to this agreement, upon request and to the extent permitted by federal law and regulations, only for the protection of the client and others.
3. Use and disclose criminal justice information acquired pursuant to a “[name of problem solving court program] Consent for Release of Information” (or any other valid Consent for Release of Information form) only as permitted by the terms of the executed Consent for Release of Information form, unless otherwise permitted or required by law.
4. Abide by 42 CFR, Part 2, Sec 2.32, which prohibits redisclosure of substance use disorder information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR, Part 2.

VII. Each Community Mental Health Services Provider agrees to:

1. Disclose confidential information to any party of this agreement who is designated on a validly executed “[name of problem solving court program] Consent for Release of Information” (or any other valid Consent for Release of Information form) in accordance with the terms and limitations of the Consent for Release of Information form.
2. Share criminal justice information with any party to this agreement, upon request and to the extent permitted by federal law and regulations, only for the protection of the client and others.

3. Use and disclose criminal justice information acquired pursuant to a “[**name of problem solving court program**] Consent for Release of Information” (or any other valid Consent for Release of Information form) only as permitted by the terms of the executed Consent for Release of Information form, unless otherwise permitted or required by law.
4. Abide by 42 CFR, Part 2, Sec 2.32, which prohibits redisclosure of substance use disorder information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR, Part 2.

VIII. Administration of the Memorandum of Understanding

1. Term of Agreement:

This agreement is effective for one year upon the date of the final signature and shall renew automatically for subsequent one-year terms unless otherwise modified. Any signatory to this agreement may terminate participation upon thirty days’ notice to all other signatories to the agreement.

2. Modification of Agreement:

Modification of this Agreement shall be made by formal consent of all parties, pursuant to the issuance of a written amendment, signed and dated by the parties, prior to any changes.

3. Other Interagency Agreements:

This agreement does not preclude or preempt each of the agencies individually entering into an agreement with one or more parties to this agreement, nor does it supplant any existing agreement between such parties.

4. Signatures of Parties to this Agreement:

In Witness Whereof, the parties hereto have entered into this agreement as evidenced by their signatures below. A certified copy of the agreement shall be provided to each signatory to the Agreement. The original Agreement shall be filed with the Clerk of the [**court number, and type**] Court.

Honorable [**name**], Chief Judge, [**court number and type**] Court

Signature

Date

Honorable [**name**], [**name of problem solving court**] Judge, [**court number and type**] Court

Signature

Date

[Name], Program Coordinator, [name of problem solving court]

Signature

Date

[Name and title], team member, [name of county] prosecutor's office

Signature

Date

[Name and title], authorizing official on behalf of [name of county] prosecutor's office

Signature

Date

[Name], defense attorney, team member, [name of law firm]

Signature

Date

[Name], defense attorney, authorizing official on behalf of [name of law firm]

Signature

Date

[Name and title], team member, [name of law enforcement agency]

Signature

Date

Name and title], authorizing official on behalf of [name of law enforcement agency]

Signature

Date

[Name and title], [agency name], team member, Community Mental Health Services provider

Signature

Date

[Name and title], [agency name], authorizing official on behalf of Community Mental Health Services provider

Signature

Date

[Name and title], [agency name], team member, **[type of treatment/ancillary]** services provider

Signature

Date

[Name and title], [agency name], authorizing official on behalf of **[type of treatment/ancillary]** services provider

Signature

Date

Mark F Botts, L. B. (2015, April 7). *<https://www.sog.unc.edu/publications/reports/north-carolina-juvenile-justice-%E2%80%93-behavioral-health-information-sharing-guide>*. Retrieved April 11, 2018, from <https://www.sog.unc.edu/sites/www.sog.unc.edu/files/Information%20Sharing%20Guide%20FINAL%20PDF%20to%20authors%202015-06-25.pdf>

IX. Attachments

[Insert list of forms or other pertinent documents to implement the above agreement. Delete section if there are no attachments.]

Attachment 1: **[Name of problem solving court]** procedures and/or policies regarding confidentiality

Attachment 2: **[Name of problem solving court]** consent to release information (form)

Attachment 3: **[Name of problem solving court]** visitor confidentiality agreement

Attachment 4: Notice of Prohibition against Redisclosure

Appendix H

Model Visitor Confidentiality and Consent for Release of Information

MODEL VISITOR CONFIDENTIALITY FORM²⁸
[Name of PSC] Program Visitor Confidentiality Form

I, _____, as a guest of the [name of PSC] Program, recognize my responsibility to maintain the confidentiality of the [name of PSC] Program, and hereby agree that:

1. Any and all information discussed at the [name of PSC] staffing team meeting must remain confidential and shall not be revealed to anyone.
2. If I receive a copy of case reports for a staffing team meeting, I will return all reports in their entirety to a team member at the end of the staffing team meeting.
3. I shall abide by the [name of PSC] program's MOU regarding confidentiality (attached).
4. I understand that alcohol and/or drug treatment records and mental health records are protected under the federal regulations governing Confidentiality and Drug Abuse Patient Records, 42 CFR, Part 2, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR, Parts 160 & 164, and I shall abide by the confidentiality provisions of the law.
5. By signing this form, I confirm that I have read and agree to the above statements.

Signature of guest

Date

Printed name of guest

Date

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[Name of PSC program]
Consent for Release of Information
Observation of Staffing Meeting

Participant's Full Name: _____

DOB: _____

I authorize the team members of the **[name of PSC program]**, specifically:

[Name of PSC] program Judge and staff

[Name of county] MDOC

[Name of district court] probation department

[Name of county] prosecutor's office

[Name of treatment agency]

[Name of law enforcement agency]

[Name of law firm/office, or name of defense attorney on team]

[Name of drug and alcohol testing agency]

[Name of electronic monitoring agency]

[Name of county] Office of Community Corrections

to release information to the following parties:

1. Name of PSC observer: _____

Title: _____

Agency/program: _____

2. Name of PSC observer: _____

Title: _____

Agency/program: _____

3. Name of PSC observer: _____

Title: _____

Agency/program: _____

4. Name of PSC observer: _____

Title: _____

Agency/program: _____

To disclose information discussed at the staffing meeting, held on **[date]**, which may include the following information:

INFORMATION TO BE SHARED

1. Name, address, and other personal identifying information of the participant
2. **[Name of PSC program]** assessments (GAIN, COMPAS, risk and needs, etc.)
3. **[Name of PSC program]** personal Data Sheet/Social History
4. **[Name of PSC program]** Individualized Service Plans, Commitment Summaries, Behavior Summaries, and Updates
5. Substance abuse assessment and treatment information, including treatment plans and discharge summaries
6. Substance abuse treatment attendance, progress and compliance reports
7. Mental health assessment and treatment information, including treatment plans and discharge summaries
8. Mental health treatment progress and compliance reports
9. Drug screening and testing results
10. Ignition Interlock and electronic monitoring information
11. Developmental disabilities assessment and service information, including service plans and discharge summaries
12. Health information
13. Reportable communicable disease information, including HIV, sexually transmitted infections, hepatitis, and tuberculosis
14. Health plan or health benefits information
15. Service plan and treatment outcomes
16. Other (specify, if any): _____

Note: I authorize all of the foregoing information to be shared unless I indicate here, by number, one or more categories of information not to be shared: _____

PURPOSE OF USE AND DISCLOSURE

The purposes for the disclosures authorized by this form are:

1. To assist **[name of court/agency]** in planning, implementation, or enhancement of their drug treatment court.
2. For the evaluation of **[name of PSC program]**.
3. Other (please specify): _____

REDISCLASURE AND CONFIDENTIALITY

Once health care information is disclosed pursuant to this signed authorization, I understand that the federal health privacy law (45 CFR, Parts 160 and 164) protecting health information may not apply to the recipient of the information and, therefore, may not prohibit the recipient from redisclosing information to others. However, substance abuse treatment information protected by federal law (42 CFR., Part 2), shall remain confidential and must not be redisclosed by the recipient except as authorized by those laws or this authorization.

CONSENT EXPIRATION

The date, event, or condition upon which consent expires must ensure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given.

This consent for release of information shall expire on **[date of the day following observed staffing]**.

SIGNATURE CONSENTING TO RELEASE OF INFORMATION

Participant signature

Date

Staff witness signature

Date

Staff witness printed name

Appendix I

Model Program MOU

Model Memorandum of Understanding²⁹

[Name of mental health court]

This is an understanding between the [name of county] prosecuting attorney; [name of county] sheriff's department; Michigan Department of Corrections; [court number] district court and the district court probation department; [court number] circuit court and the circuit court probation department; [name of defense counsel representative], defense counsel representative; [name of community mental health] treatment provider; [name of substance use/abuse treatment agency], substance abuse treatment services; and [name of mental health court] judge and program coordinator.

I. Purpose

The purpose of this Memorandum of Understanding (MOU) is to describe duties and allocate responsibilities for members of the [name of mental health court] team. The MOU also establishes team member responsibilities and requirements for maintaining compliance with the federal law of confidentiality (42 CFR, Part 2), the Health Insurance Portability and Accountability Act (HIPAA, 45 CFR, Parts 160 and subparts A and E of Part 164), and the Michigan Mental Health Court Statute (MCL 600.1090).

II. Terms/Definitions

1. Participant: Any person referred to the [name of mental health court], currently being screened as a candidate for [name of mental health court] (including those who are ultimately denied entry to the program), currently participating in [name of mental health court], or someone who has been discharged from the [name of mental health court].
2. Policies and Procedures Manual: A policy and procedure manual documents program policies and procedures designed to influence and determine all major decisions and actions, and all activities that take place within the boundaries set by them. Procedures are the specific methods employed to express policies in action in day-to-day operations of the organization.
3. Redisclosure: The act of sharing or releasing health information that was received from another source (e.g., external facility or provider) and made part of a patient's health record or the organization's designated record set.
4. Stakeholders: A person, group or organization that has interest or concern in an organization.

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Since there might be a delay in updating the model document on the web page and updating the model document in this manual, the most up-to-date version of the model document is always available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/MHC-ProgramMOU.pdf>

5. Treatment services: Any services provided by a licensed clinician or by an employee of an agency providing therapeutic services for substance use disorder, mental health, or developmental disabilities.
6. Waiver: The “voluntary relinquishment of a known right.” (Kelly v Allegan Circuit Judge, 1969)

III. Goals and Mission of the [name of mental health court]

1. The above parties agree to share the following vision for the [name of mental health court]:
 - A. Enhance the quality of life throughout [name of county] County.
 - B. Provide leadership through innovative services.
 - C. Continuously improve services.
 - D. Achieve program goals through teamwork.
 - E. Reduce criminal behavior and decrease incarceration of the mentally ill.
 - F. Ensure each component of the mental health court is aware and in compliance with federal confidentiality law requirements.
2. We endorse the goals and mission of the [name of mental health court] in order for participants to eliminate future criminal behavior and improve the quality of their lives. For this program to be successful, cooperation must occur within a network of systems to facilitate and achieve the mission, challenge, and vision of the [name of mental health court].
3. We agree that the mission of the [name of mental health court] shall be to successfully link those with a serious mental illness, serious emotional disturbance, or a developmental disorder to the appropriate treatment services while maintaining public safety and reducing recidivism.
4. We agree to the following challenge of the [name of mental health court]: Engaging those with a serious mental illness, serious emotional disturbance, or a developmental disability involved in the criminal justice system in a continuum of treatment services and providing them with appropriate intervention through treatment, rehabilitative programming, reinforcement, and monitoring.

IV. Guiding Principles of the [name of mental health court]

1. There are ten elements under which the respective agencies work cooperatively:
 - A. Develop a broad-based group of stakeholders to guide the administration of the program.
 - B. Target individuals whose mental illness is related to their crime and meet both clinical and legal criteria for admission.
 - C. Identify and link participants within a timely manner to the appropriate treatment services.
 - D. Promote positive legal outcomes by well-defined terms of participation that facilitate engagement in treatment that corresponds to the level of risk to the community.
 - E. Address competency issues in a timely fashion when they arise and provide legal counsel to assist with admission and program requirements.
 - F. Provide comprehensive and individualized treatment while striving to utilize evidence-based services.

- G. Protect participants' health and legal information in compliance with the Health Insurance Portability and Accountability Act (HIPAA) and Part 2 of 42 CFR while making information available to the court team.
- H. Maintain a court team that is comprised of court, criminal justice, and mental health staff, along with treatment and service providers who maintain ongoing specialized training. The team is responsible for assisting a participant to achieve their goals.
- I. Collaboratively monitor program requirements while offering graduated incentives and sanctions to modify behavior.
- J. Periodically evaluate the program's functioning and effectiveness to ascertain local support by reviewing data that is collected.

V. Roles of the Parties of the [insert name of mental health court]

[Individual mental health courts are to amend and modify their MOU in accordance with their decisions as to who makes up their team and those members' appropriate roles and responsibilities.]³⁰

The roles of the parties are as follows:

1. Mental health court judge:
 - A. Serve as the leader of the team.
 - B. Attend staffing meetings and preside over status review hearings.
 - C. Engage the community to generate local support for the mental health court.
 - D. Communicate with the participants in a positive manner and make final decisions regarding incentives and sanctions and program continuation.
 - E. Consider the perspective of all team members before making final decisions that affect participants' welfare or liberty interests, and explain the rationale for such decisions to team members and participants.
 - F. Rely on the expert input of duly trained treatment professionals when imposing treatment related conditions on the participants.
 - G. Provide program oversight and ensure communication and partnership with treatment.
 - H. On an annual basis, attend current training events on legal and constitutional issues in mental health courts, judicial ethics, evidence-based substance abuse and mental health treatment, behavior modification, and/or community supervision.
2. Prosecuting attorney:
 - A. Provide legal screening of eligible participants.
 - B. Attend staffing meetings and review hearings and provide input on incentives and sanctions for participants.
 - C. Represent the interests of the prosecutor and law enforcement.
 - D. Advocate for public safety.
 - E. Advocate for victim interest.
 - F. Hold participants accountable for meeting their obligations.
 - G. If a plea agreement is made based on completion of the program, complete appropriate court documents for resultant modification(s) upon participant's successful completion of the program (reduced charge, nolle prosequi, etc.).

³⁰ Per MCL 600.1091(1) "The memorandum of understanding shall describe the role of each party."

- H. May help resolve other pending legal cases that impact participants' legal status or eligibility.
- 3. Office of Community Corrections:
 - A. Attend staffing meetings and provide input on incentives and sanctions for participants.
 - B. Share information as necessary, and in compliance with 42 CFR and HIPAA, to appraise participants' progress in, and compliance with, the conditions of mental health court.
 - C. Provide feedback to the court on the program participants' progress in community corrections programs.
- 4. County sheriff's department:
 - A. Attend staffing meetings and provide input on incentives and sanctions for participants.
 - B. Provide deputies to assist with home checks for participants (limited).
 - C. Provide feedback, suggestions, and ideas on the operation of the mental health court.
- 5. Probation officers and/or court case managers:
 - A. Attend staffing meetings and review hearings and provide input on incentives and sanctions for participants.
 - B. Share information as necessary, and in compliance with 42 CFR and HIPAA, to appraise participants' progress in, and compliance with, the conditions of mental health court.
 - C. Provide probation oversight for all program participants.
 - D. Work with the program coordinator in supervising and monitoring the individuals in the program.
 - E. Prepare presentence reports and perform drug and alcohol tests as needed.
 - F. Schedule probation violations or show cause hearings for participants who have violated the program rules.
 - G. On an annual basis, attend current training events on legal and constitutional issues in mental health courts, evidence-based substance abuse and mental health treatment, behavior modification, and/or community supervision.
 - H. Enter data into the DCCMIS system.
- 6. Defense counsel representative:
 - A. Attend staffing meetings and review hearings and provide input on incentives and sanctions for participants.
 - B. Ensure that defendants' procedural and due process rights are followed.
 - C. Ensure that the participant is treated fairly and that the mental health court team follows its own rules.
 - D. Provide feedback, suggestions, and ideas on the operation of the mental health court.
- 7. Project coordinator:
 - A. Attend staffing meetings and provide input on incentives and sanctions for participants.

- B. Share information as necessary, and in compliance with 42 CFR and HIPAA, to appraise participants' progress in, and compliance with, the conditions of mental health court.
 - C. Arrange for additional screenings of persons aside from the prosecutor's legal screening.
 - D. Answer inquiries from defense attorneys on possible eligibility.
 - E. Enter data into the DCCMIS system.
 - F. Liaison with treatment providers and drug testing contractor (if applicable), probation, and residential treatment facilities.
 - G. On an annual basis, attend current training events on legal and constitutional issues in mental health courts, evidence-based substance abuse and mental health treatment, behavior modification, and/or community supervision.
 - H. Ensure that new team members are provided with a formal training within three months of joining the team on the topics of confidentiality, and his or her role on the team, and that the new team member is provided with copies of all program policy and procedure manuals, the participant handbook, and a copy of all current memoranda of understanding.
8. Community Mental Health Services provider:
- A. Attend staffing meetings and review hearings and provide input on incentives and sanctions for participants.
 - B. Share information as necessary, and in compliance with 42 CFR and HIPAA, to appraise participants' progress in treatment and compliance with the conditions of mental health court.
 - C. Conduct assessments to determine program eligibility, appropriate treatment services, and progress in treatment.
 - D. Report on attendance and progress of participants in treatment services.
 - E. Manage delivery of treatment services.
 - F. Administer behavioral or cognitive-behavioral treatments that are documented in manuals and have been demonstrated to improve outcomes.
 - G. Provide clinical case management.
 - H. Offer insights and suggestions on the treatment plans of individuals in the program.
 - I. On an annual basis, attend current training events on legal and constitutional issues in mental health courts, evidence-based substance abuse and mental health treatment, behavior modification, and/or community supervision.
 - J. Enter data into the DCCMIS system.

VI. Deferrals, Delays, and Deviation from Sentencing Guidelines³¹

The prosecutor must approve an individual's admission into the [name of mental health court] if the individual will be eligible for discharge and dismissal of an offense, delayed sentence, or deviation from the sentencing guidelines.

VII. Program Fee³²

The program charges a fee of [amount of fee] to each participant, to be paid in [specify due date or payment parameters]. In accordance with MCL 600.1095, the clerk of the mental health court shall transmit the fees collected to the treasurer of the local funding unit at the end of each month. The fee must be reasonable and calculated based on costs reasonably related to administering the program that are not covered by other funding such as insurance, block grants, PA 511, or another agency. These costs include [list cost of program personnel, treatment, drug testing, supplies, travel costs, training, and any other costs incurred by the mental health court to administer the program].

VIII. Confidentiality

1. A mental health court's performance of, or request for, an assessment of chemical dependency of a mental health court participant, or a referral to treatment, places the mental health court within the parameters of 42 CFR, Part 2. Additionally, treatment agencies partnering with the [name of mental court] must comply with the Health Insurance Portability and Accountability Act (HIPAA) that protects confidentiality and the security of protected health information, therefore, all parties agree to abide by the following:
 - A. Confidential treatment court information and records, including information obtained as a result of participating in a preadmission screening and evaluation assessment, is confidential and is exempt from disclosure under the Freedom of Information Act (FOIA), and may not be used to initiate or to substantiate any criminal charges against a participant or to conduct any investigation of a participant, unless it reveals criminal acts other than, or inconsistent with, personal drug use. (42 CFR, Part 2)
 - B. State law may neither authorize nor compel any disclosure prohibited by the federal regulations, but where state law prohibits disclosure that would be permissible under the federal regulations, the stricter standard applies.
 - C. Treatment courts may receive or release information or records of participants only with the specific knowing, voluntary, and written consent of the participant, or under certain very limited exceptions. (42 CFR, Sections 2.14 through 2.35)
 - D. The participant must be advised, orally and in writing, that federal law protects the confidentiality of treatment records. The notice must cite Section 290dd-2 and the implementing regulations (Sections 2.1 through 24 of Title 42 of the code of Federal Regulations), and must state the following:

³¹ Per MCL 600.1098(3) "...the court, with the agreement of the prosecutor and in conformity with the terms and conditions of the memorandum of understanding under section 1091, may discharge and dismiss the proceedings against an individual..." who meets the requirements of MCL 600.1098(3) a-d.

³² Per MCL 600.1095(3) "The mental health court may require an individual admitted into the court to pay a reasonable mental health court fee that is reasonably related to the cost to the court for administering the mental health court program as provided in the memorandum of understanding."

- a. Treatment information is ordinarily kept confidential.
 - b. It is a crime to violate this confidentiality requirement, which the participant may report to appropriate authorities, [insert name and phone number of appropriate attorney general's office].
 - c. Notwithstanding this confidentiality requirement, covered information may be released under specified circumstances [insert list of specific circumstances], and may include medical emergency, crimes on the premises, crimes against staff, administration/qualified service providers working with drug court, and outside auditors, central registries and researchers).
 - d. Federal law does not protect information relating to the abuse or neglect of a child, state child abuse laws, court orders signed pursuant to 42 CFR Part 2 for release of specific information, state laws relating to cause of death and duty to protect others, and to warn of serious imminent harm.
 - E. Any documented treatment information distributed on the basis of the treatment participant's consent must be accompanied by a Notice of Prohibition Against Redisclosure. The prohibition on redisclosure only applies to information that would identify, directly or indirectly, an individual as having been diagnosed, treated, or referred for treatment for a substance use disorder, such as indicated through standard medical codes, descriptive language, or both, and allows other health-related information shared by the part 2 program to be redisclosed, if permissible under other applicable laws. (42 CFR, Section 2.32)
 - F. Confidential records must be kept in a secure room and locked container. Access to confidential records must be limited to authorized individuals. (42 CFR, Section 2.16)
2. Mental health court team members shall be familiar with relevant federal and state laws and regulations in order to develop or modify appropriate policies and procedures regarding confidentiality.
 3. All file storage systems shall include procedures for limiting access to records after the participant's consent expires or is revoked. Thus, paper records that can be accessed by all mental health court personnel during the duration of the participant's consent are transferred to a more restricted storage facility as soon as the consent is terminated. Records on computers are sealed by changing the password or other access.
 4. All team members shall abide by the attached [name of mental health court] policy and procedures regarding sharing or distribution of confidential information which regulates and controls access to and use of written and electronic confidential records. Written procedures include requests for access to confidential information by the public, attorneys, or any interested party outside the treatment court team, and formal policies and procedures addressing security, including sanitization of associated media, for both paper and electronic records. (42 CFR section 2.16)
 5. Electronic data that is subject to confidentiality standards shall be protected by security walls and password-protected. Access shall be limited, and disclosure/redisclosure is subject to approval by the treatment court judge and team.
 6. The mental health court team shall decide if precourt staffing meetings will be closed to participants and the public and describe its policy in the participant agreement. If the staffing is open to visitors the participant must be provided the name of the visitor(s) and

must consent in writing to having his or her confidential information released to the visitor. All visitors shall be required to sign an agreement that they adhere to the confidentiality provisions of the law (and particularly as to the rule against redisclosure) and the other requirements of the [name of mental health court] MOU.

7. The parties, including each party's employees and other agents, shall maintain the confidentiality of all records generated during the term of this MOU in accordance with all applicable state and federal laws and regulations, including, but not limited to, 42 CFR Part 2.

IX. Term of Agreement

This agreement is effective for one year upon the date of the final signature and shall renew automatically for subsequent one-year terms unless otherwise modified. Any signatory to this agreement may terminate participation upon thirty days' notice to all other signatories.

X. Agency Representatives

[Individual mental health courts are to amend and modify their MOU in accordance with their decisions as to stakeholder agencies.]

This MOU will be administered by the [name of mental health court] local team, which consists of the following stakeholder agency representation: [name of county] prosecuting attorney; [name of county] sheriff's department, Michigan Department of Corrections, [court number] district court and the district court probation department; [court number] circuit court and the circuit court probation department; [name of defense counsel representative] defense counsel representative; [name of treatment provider agency] treatment provider; [name of substance use/abuse treatment agency] substance abuse treatment services; and [name of mental health court] judge and project coordinator.

XI. Modification of Agreement

Modification of this agreement shall be made by formal consent of all parties, pursuant to the issuance of a written amendment, signed and dated by the parties, prior to any changes.

XII. Other Interagency Agreements

This agreement does not preclude or preempt each of the agencies individually entering into an agreement with one or more parties to this agreement, nor does it supplant any existing agreement between such parties.

XIII. Signatures of Parties to this Agreement^{33,34}

The parties have entered into this agreement as evidenced by their signatures below. A certified copy of the agreement shall be provided to each signatory to the agreement. The original agreement shall be filed with the clerk of [court number] [court type] Court.

Honorable [name], Chief Judge, [court number and type] Court

Signature

Date

Honorable [name], [name of mental health court] Judge, [court number and type] Court

Signature

Date

[Name], Court Administrator, [court number] Circuit Court

Signature

Date

[Name], Court Administrator, [court number] District Court

Signature

Date

[Name], Project Coordinator, [name of mental health court]

Signature

Date

³³ Per MCL 600.1091, "...if the mental health court will include in its program individuals who may be eligible for discharge and dismissal of an offense, delayed sentence, or deviation from the sentencing guidelines..." the court may not adopt a mental health court unless the court enters into "...a memorandum of understanding with each participating prosecuting attorney in the circuit or district court ..., a representative or representatives of the community mental health services programs, a representative of the criminal defense bar, and a representative or representatives of community treatment providers."

³⁴ If this is the only program memorandum of understanding with respect to confidentiality, then all team members, and replacement team members, must sign this memorandum of understanding.

[Name and title], Probation Department, [court number] District Court

Signature

Date

[Name], Chief Prosecuting Attorney, [name of county]

Signature

Date

[Name], Sheriff, [name of county] Sheriff's Department

Signature

Date

[Name and title], Michigan Department of Corrections

Signature

Date

[Name], defense attorney, [name of firm/agency]

Signature

Date

[Name and title], [name of community mental health agency]

Signature

Date

[Name and title], [name of community treatment provider agency]

Signature

Date

XIV. Attachments

[Insert here list of forms or other pertinent documents to implement the above agreement.
Delete section if there are no attachments.]

- Attachment 1: [Name of mental health court] policy and procedures regarding sharing or distribution of confidential information
- Attachment 2: Policy and Procedure Manual
- Attachment 3: [Name of mental health court] consent to release information (form)
- Attachment 4: [Name of mental health court] visitor confidentiality agreement
- Attachment 5: Notice of Prohibition Against Redisclosure

Appendix J

Model Mental Health Court

Agreement to Participate and Waiver

AGREEMENT TO PARTICIPATE³⁵ [Name of mental health court program]

I, **[name of participant]**, agree to participate in the **[name of mental health court]** Program. I agree to follow all terms and conditions of the mental health court program as established by the court and the mental health court team.

I agree to:

1. Cooperate with the mental health court to complete a screening and assessment, and any future instructions to complete an evaluation or assessment. A treatment recommendation will be made and shared with the mental health court team.
2. Work with treatment staff to develop a treatment plan and follow the plan accordingly, including aftercare and continuing care recommendations.
3. Not use, possess, or consume alcohol and/or other illegal or controlled substances, nor be in the presence of any person using, possessing, or consuming said substances; nor enter premises where alcohol is the primary source of revenue. I understand if I am found to be under the influence of drugs, alcohol, or medication not prescribed to me I may be sanctioned and/or terminated from the program.
4. Submit to PBT's, electronic alcohol monitoring, and/or drug and alcohol screening as requested.
5. Be employed or enrolled in an educational program, or participate in another positive activity as directed.
6. Notify the mental health court of any changes in phone number within 24 hours.
7. Not change my place of residence without prior authorization from the mental health court.
8. Notify the mental health court of any police contact, arrest or criminal charge within 24 hours.
9. Make full and truthful reports to the mental health court, as directed by any team member.
10. Not engage in any antisocial, assaultive, threatening, or aggressive behavior.
11. Not leave the state without the prior consent of the mental health court.
12. Maintain the confidentiality of other mental health court participants.

³⁵ This model document is provided by SCAO as a resource and for informational purposes only to facilitate the operation of problem solving courts by local units of government and courts in compliance with statutory requirements. SCAO's sharing this model agreement is not intended (and cannot be construed) as legal advice.

Since there might be a delay in updating the model document on the web page and updating the model document in this manual, the most up-to-date version of the model document is always available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/MHC-AgreementToParticipate.pdf>

13. Pay all outstanding monies resulting from my conviction including but not limited to: court fines, court costs, court fees, restitution, and assessments and pay all, or make substantial contributions toward payment of, the costs of the treatment and the mental health court program services provided to the participant, including, but not limited to, the costs of drug or alcohol testing or counseling. . However, if the court determines that the payment of court fines, court fees, or drug or alcohol testing expenses would be a substantial hardship for me or would interfere with my treatment, the court may waive all or part of those fines, the fee, or costs of drug or alcohol testing.
14. Appear in court on all scheduled court dates and to attend all appointments with my probation officer, case manager, and/or treatment provider.
15. Comply with the program's policies and conditions discussed within the **[name of mental health court program]** Participant Handbook.

I waive the following rights:

1. The right to a speedy trial.
2. With the agreement of the prosecutor, the right to a preliminary hearing.
3. To be present at the team staffing meetings.

I understand that:

1. The mental health court program has a duration of **[minimum to maximum]** months.
2. I must have prior permission from the mental health court before consuming any medication.
3. The data in my public and confidential file may be used for research, data analysis and program evaluation by the mental health court, court staff, or individuals or others independent of the mental health court. Any data used in this way will be de-identified prior to distribution.
4. I understand I am required to attend all appointments for court, treatment, ancillary services, and all drug and alcohol testing as scheduled.
5. I understand that mental health court staff may make unscheduled home visits, and I will allow mental health court team members, together with law enforcement officials if accompanied, into my home at any time for supervision or compliance reasons.
6. I recognize that guests of the mental health court may visit the program and attend team meetings, and/or review hearings. Any observers must sign a confidentiality agreement forbidding unlawful disclosure of confidential information to any individual who is not a member of the mental health court team, and my information will not be disclosed unless I sign a consent to release of information specific to that observer.
7. Failure to fully comply with all the terms and conditions of the program listed above may result in the following:
 1. Notification to the judge that I am in violation of the program,
 2. Should I admit guilt to or be found guilty of a program violation, sanctions, up to and including jail, may be imposed or additional conditions may be added as determined by the Judge with input from the mental health court team, and/or
 3. Termination from the program
8. I understand that the mental health court may amend these conditions and/or add new

conditions, notice of which will be provided to me in writing. I understand that I must comply with the amended or added conditions.

The mental health court coordinator agrees to:

1. Meet with the program participant as needed to help assure successful completion in the program.
2. Report the participant's progress and tests results to the court.
3. Refer the participant to any community agency at the mental health court's disposal which may assist in the participant's recovery.

I have discussed the above listed conditions with my attorney or the mental health court coordinator and received a copy of this form and a copy of the **[name of mental health court program]** Participant Handbook.

Participant Signature

Date

I have discussed the above listed conditions with the participant and have provided a copy of the agreement and the **[name of mental health court program]** Participant Handbook to the participant.

Coordinator Signature

Date

³⁶ This model document is provided by SCAO as a resource to assist problem-solving courts in complying with a standard for certification. It is not intended to be legal advice or to include all due process requirements.

Since there might be a delay in updating the model document on the web page and updating the model document in this manual, the most up-to-date version of the model document is always available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/ModelProgVioAdviceRights.pdf>

- i. The original offense was punishable by over 92 days in jail; AND,
 - ii. The offense charged required a minimum jail sentence, OR,
 - iii. The court determines that it may send you to jail, OR,
 - iv. The court determines that it may terminate you from the PSC program.
3. If you have a contested program violation hearing, you have the following rights at the hearing:
 - a. To call witnesses to speak for you at the hearing. You may get an order signed by the court to require witnesses to come to court and testify.
 - b. To see, hear, and question all witnesses against you at the hearing.
 - c. To be a witness for yourself or remain silent. If you testify, your testimony will be considered by the court according to the same standards applied to all other witnesses' testimony. If you choose not to testify on your own behalf, no one may comment on your refusal to testify and the court will not presume or infer any evidence of guilty from the exercise of your right.
 - d. To be presumed innocent until proven guilty by a preponderance (the greater weight) of the evidence.
4. If you plead guilty and your plea is accepted you will not have a contested hearing of any kind and in addition you will give up the right to an attorney and all of the rights listed in item 3 above.
5. If you decide to plead guilty without an attorney representing you, and your plea is accepted, you will be giving up your right to have an attorney or court-appointed attorney represent you. Also, if you proceed with a hearing without an attorney or court-appointed attorney representing you, you will be giving up your right to have an attorney represent you at the hearing.
6. If you waive your rights and plead guilty to violating your program conditions you can offer any explanation to the court along with your guilty plea and you can tell the Judge any other information you want the Judge to know and consider before the court decides on any sentence.
7. You have the right to be released on bond pending a contested program violation hearing.

The defendant was provided a copy of the alleged violation(s) of the PSC program and a copy of the Advice of Rights for this PSC Program Violation by

_____ on _____ at _____
(name) (date) (time)

Appendix L

Model MOU for Transfer of Jurisdiction Under MCL 600.1088

STATE OF MICHIGAN [transferring court number and type]	PSC Memorandum of Understanding ³⁷ Transfer of Jurisdiction under MCL 600.1088	CASE NO. [transferring case]
The people of: <input type="checkbox"/> The State of Michigan <input type="checkbox"/>	V	Defendant's name, and DOB

Offense:	
Transferring Court:	
Receiving Court:	

Under MCL 600.1088, a case may be transferred totally from one court to another for the defendant's participation in a state-certified treatment court. A total transfer may occur before or after adjudication, but it must not be consummated until the completion and execution of a memorandum of understanding that must include, but need not be limited to, the following items.

(1) *Accounting for Funds Assessed to the Defendant*

Fines, costs, fees, restitution and other monetary obligations have been assessed as follows:³⁸

Category of funds assessed	Balance due at time of transfer	Amount to be collected by transferring court	Amount to be collected by receiving court	Distribution of funds to remit			
				Transferring court	Receiving court	Other amount	Other agency
Total fine:							
Total costs:							
State minimum fee:							

³⁷ This model document is provided by SCAO as a resource and for informational purposes only to facilitate the operation of problem solving courts by local units of government and courts in compliance with statutory requirements. SCAO's sharing this model agreement is not intended (and cannot be construed) as legal advice.

Since there might be a delay in updating the model document on the web page and updating the model document in this manual, the most up-to-date version of the model document is always available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/ModelPSC-TransferJurisdiction.pdf>

³⁸ If determined by transferring court, enter as monetary amounts, or as percentage if the amount is not known. If it is to be determined by the receiving court, and the monetary amounts are not known, enter as percentages.

Crime victim's rights fee:							
Restitution:							
Prosecutor reimbursement:							
Law enforcement agency reimbursement:							
DNA assessment:							
Other (describe):							
Other (describe):							

Other information regarding how all funds assessed to the defendant will be accounted for:

(2) Providing Information to State Police and Forwarding Abstract to the Secretary of State

The **[transferring/receiving]** court is responsible for providing information to the department of state police, as required under section 3 of 1925 PA 289, MCL 28.243.

The **[transferring/receiving]** court is responsible for forwarding an abstract to the secretary of state for inclusion on the defendant's driving record.

(3) Where Jail Sanctions and Incarceration Sentences Will Be Served

Jail sanctions or incarceration sentences shall be served as follows:

- All jail sentences will be served at the **[transferring/receiving]** court.
- Any jail sentence of less than **[enter number]** days will be served at the **[transferring/receiving]** court, and any jail sentence of more than **[enter number]** days will be served at the **[transferring/receiving]** court.
- Any jail sentence for a program violation will be served at the **[transferring/receiving]** court.
- Any jail sentence ordered as part of program termination will be served at the **[transferring/receiving]** court.
- Other: _____

(4) The defendant has been determined eligible by and will be accepted into the state-certified treatment court upon transfer.

	Signatures	
--	------------	--

Transfer is hereby ordered and effective immediately upon signature of the following persons and receipt by the receiving court, as required by MCL 600.1088.

_____ Defendant	_____ Date	_____ Defense attorney	_____ Date
_____ Chief Judge (transferring court)	_____ Date	_____ Chief Judge (receiving court)	_____ Date
_____ Assigned Judge (transferring court)	_____ Date	_____ Assigned Judge (receiving court)	_____ Date
_____ Prosecuting Attorney (transferring court)	_____ Date	_____ Prosecuting Attorney (receiving court)	_____ Date

Appendix M

Ten Principles of a Good Testing Program³⁹

1. Design an effective drug detection program, place the policies and procedures of that program into written form (drug court manual), and communicate the details of the drug detection program to the court staff and clients alike.
2. Develop a client contract that clearly enumerates the responsibilities and expectations associated with of the court's drug detection program.
3. Select a drug-testing specimen and testing methodology that provides results that are scientifically valid, forensically defensible, and therapeutically beneficial.
4. Ensure that the sample-collection process supports effective abstinence monitoring practices including random, unannounced selection of clients for sample collection and the use of witnessed/direct observation sample-collection procedures.
5. Confirm all positive screening results using alternative testing methods unless participant acknowledges use.
6. Determine the creatinine concentrations of all urine samples and sanction for creatinine levels that indicate tampering.
7. Eliminate the use of urine levels for the interpretation of client drug-use behavior.
8. Establish drug-testing result interpretation guidelines that have a sound scientific foundation and that meet a strong evidentiary standard.
9. In response to drug-testing results, develop therapeutic intervention strategies that promote behavioral change and support recovery.
10. Understand that drug detection represents only a single supervision strategy in an overall abstinence-monitoring program.

³⁹ National Drug Court Institute. (2011). The Fundamentals of Drug Testing. In P. Cary, *The Drug Court Judicial Benchbook* (p. 137). Alexandria: National Drug Court Institute.

Appendix N

Mental Health Court Minimum Standard Data

Mental Health Court Minimum Standard Data Adult and Juvenile Program

Pursuant to MCL 600.1099 each mental health court shall collect and provide data on each individual applicant and participant and the entire program as required by the State Court Administrative Office (SCAO). The information collected must include a minimum standard data set developed and specified by the SCAO. In accordance with MCL 600.1099(3) the SCAO has prepared the following minimum standard data sets. The minimum standard data sets include the minimum data that must be reported to the SCAO. The reported data will be used to prepare the annual legislative report regarding mental health court performance.

Data must be collected and reported for all applicants that were screened for mental health court, even if the applicant was not accepted into the program. Therefore, the minimum standard data that follows is broken into two sets: one set for screening and one set for case management data relevant to accepted participants. This document provides descriptions and valid values for each of the variables in the minimum standard data sets. This information should be entered into the Drug Court Case Management Information System (DCCMIS) or in the SCAO excel spreadsheet template to be submitted to the SCAO quarterly.

Set 1: Screening

If the individual is screened and accepted, all of the below variables are required. If the individual is rejected, only variables 1-9, 12-13, and 19-21 are required.

Variable	Valid Values	Location in DCCMIS
1. Referral Source	<ul style="list-style-type: none"> ○ CMH ○ Counselor (juvenile) ○ Court/Judicial ○ Defense Attorney ○ DHS ○ Family Member ○ Guardian Ad Litem (juvenile) ○ Law Enforcement ○ Pretrial Services Staff ○ Probation (juvenile) ○ Probation/Parole ○ Prosecutor ○ Self ○ Social Worker (juvenile) ○ Other 	<ul style="list-style-type: none"> ○ Screening Page 1.
2. Referral Date	<ul style="list-style-type: none"> ○ Date (mm/dd/yyyy) 	<ul style="list-style-type: none"> ○ Screening Page 1

3. Screening Date	○ Date (mm/dd/yyyy)	○ Screening Page 1
4. First Name	○ Alpha	○ Screening Page 1
5. Last Name	○ Alpha	○ Screening Page 1
6. Address	● Alpha	○ Screening Page 1
7. City	● Alpha	○ Screening Page 1
8. State	○ Pull-Down Menu of All States	○ Screening Page 1
9. Zip	○ Numeric	○ Screening Page 1
10. Race	○ African American ○ Alaska Native ○ Asian/Pacific Islander ○ Caucasian ○ Hispanic/Latino ○ Multiracial ○ Native American ○ Other	○ Screening Page 1
11. Ethnicity	○ Hispanic ○ Non-Hispanic ○ Unknown/Unreported	○ Screening Page 1
12. Gender	○ Male/Female	○ Screening Page 1
13. DOB	○ Date (mm/dd/yyyy)	○ Screening Page 1
14. Marital Status	○ Single ○ Married ○ Separated ○ Divorced ○ Widowed	○ Screening Page 1
15. SSN	○ Numeric ○ Must be accurate. All 0s not allowed.	○ Screening Page 1
16. SID	○ Alpha/Numeric ○ Must be accurate. All 0s not allowed.	○ Screening Page 1
17. Lead Charge	○ Charge Code and Charge Title	○ Screening Page 2
18. Case/Docket Number	○ Alpha/Numeric	○ Screening Page 2
19. Offense Category	○ Crime Against a Person ○ Crime Against Property ○ Crime Against Public Order ○ Crime Against Public Safety ○ Crime Against Public Trust ○ Crime Involving a Controlled Substance ○ City/County Ordinance ○ B&E/Home Invasion ○ Crime Involving a Controlled Substance ○ C.S. Manufacturing/Distribution ○ C.S. Use/Possession ○ DUI Alcohol/C.S. 1st ○ DUI Alcohol/C.S. 2nd ○ DUI Alcohol/C.S. 3rd	○ Screening Page 2

	<ul style="list-style-type: none"> ○ Neglect and Abuse Civil ○ Neglect and Abuse Criminal ○ Nonviolent Sex Offense ○ Other Alcohol Offense ○ Other Drug Offense ○ Other Traffic Offense (criminal) ○ Property Offense ○ Domestic Violence ○ Other 	
20. Charge Type	<ul style="list-style-type: none"> ○ Civil/Petition ○ Felony ○ Misdemeanor ○ Other 	○ Screening Page 2
21. Incident Offense	<ul style="list-style-type: none"> ○ New Criminal Offense ○ New Petition ○ Parole Violation New Criminal Offense ○ Parole Violation Technical ○ Probation Violation New Criminal Offense ○ Probation Violation Technical 	○ Screening Page 2
22. Arrest Date	○ Date (mm/dd/yyyy)	○ Screening Page 2
23. Offense Date	○ Date (mm/dd/yyyy)	○ Screening Page 2
24. Court Program Approach	<ul style="list-style-type: none"> ○ Deferred/Delayed Sentence (adult) ○ Post-Sentence (adult) ○ Consent (juvenile) ○ Formal (juvenile) 	○ Screening Page 2
25. Cell Type (only required if charge type is a felony)	<ul style="list-style-type: none"> ○ Intermediate ○ Presumptive/Prison ○ Straddle 	○ Screening Page 2
26. Prior Convictions	<ul style="list-style-type: none"> ○ Yes/No ○ If yes, enter number of misdemeanors and felonies 	○ Screening Page 2
27. Primary Mental Illness Diagnosis	○ DSM Diagnosis Code	○ Screening Page 3
28. Current Substance Use	<ul style="list-style-type: none"> ○ Yes/No ○ If Yes, enter Primary Drug of Choice ○ If Yes, enter Yes/No for Prior Substance Abuse Treatment ○ If Yes, enter ASAM placement criteria and recommended treatment modality 	○ Screening Page 3
29. Medical Insurance Status	<ul style="list-style-type: none"> ○ Medicaid ○ Medicare ○ None ○ Private Insurance ○ Other 	○ Screening Page 4

30. Highest Education Completed	<input type="radio"/> < Or = 11th Grade <input type="radio"/> GED <input type="radio"/> HS Graduate <input type="radio"/> Some Trade School <input type="radio"/> Trade School Graduate <input type="radio"/> Some College <input type="radio"/> College Graduate 2 year program <input type="radio"/> College Graduate 4 year program <input type="radio"/> Some Post Graduate <input type="radio"/> Advanced Degree <input type="radio"/> Community College <input type="radio"/> Not in School	<input type="radio"/> Screening Page 5
31. Current Employment Status	<input type="radio"/> Unemployed <input type="radio"/> Employed Part-Time (less than 35 hours/week) <input type="radio"/> Employed Full-Time (more than 35 hours/week) <input type="radio"/> Not in the Labor Force <input type="radio"/> Retired <input type="radio"/> Student Full-Time <input type="radio"/> Volunteer <input type="radio"/> Disabled	<input type="radio"/> Screening Page 5
32. Living Situation at Entry	<input type="radio"/> Dependent/Residing with Others <input type="radio"/> Homeless <input type="radio"/> Independent	<input type="radio"/> Screening Page 5
33. Mental Health Court Acceptance or Rejection	<input type="radio"/> Accepted <input type="radio"/> Rejected <input type="radio"/> Mistaken Screening	<input type="radio"/> Take Action on Pending Person
If Accepted into Mental Health Court		
34. Acceptance Date	<input type="radio"/> Date (mm/dd/yyyy)	<input type="radio"/> Take Action on Pending Person
35. Judge	<input type="radio"/> Name from Pull-Down Menu	<input type="radio"/> Take Action on Person
36. Case Manager	<input type="radio"/> Name from Pull-Down Menu	<input type="radio"/> Take Action on Person
37. Jail Status of Defendant	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> If yes, include admission date and end date	<input type="radio"/> Take Action on Pending Person
If Rejected from Mental Health Court		
38. Date Rejected	<input type="radio"/> Date (mm/dd/yyyy)	<input type="radio"/> Take Action on Pending Person
39. Mental Illness	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Unknown	<input type="radio"/> Take Action on Pending Person
40. Rejection Reason	<input type="radio"/> Police Object <input type="radio"/> Prior Record	<input type="radio"/> Take Action on Pending Person

	<ul style="list-style-type: none"> ○ Program at Capacity ○ Prosecuting Attorney ○ Statutory Ineligibility ○ Pending Another Case ○ Unable to Locate ○ No SA diagnosis ○ Refusal ○ Mental Health ○ Medical Issues ○ History of Violent Offenses ○ Geographic/Transportation Issues ○ Judicial Denial ○ Nontarget Population ○ Death ○ Eligible, but Randomized ○ Not US Citizen ○ Ineligible Mental Health Diagnosis ○ Transferred to Another Jurisdiction ○ Other 	
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Questions about this data set can be directed to TrialCourtServices@courts.mi.gov.

Set 2: Case Management

Minimum Standard Data Set for participants accepted into mental health court.

41. Consent Date	<ul style="list-style-type: none"> ○ Date the participant signed the agreement to participate (mm/dd/yyyy) 	<ul style="list-style-type: none"> ○ Client Menu-Personal Demographics
42. Local Assessment	<ul style="list-style-type: none"> ○ Assessment Date ○ Assessment Tool ○ Other – Enter Type of Tool ○ Timing of Assessment ○ Score/Results 	<ul style="list-style-type: none"> ○ Client Menu-Local Assessment
43. Treatment Provider	<ul style="list-style-type: none"> ○ Program Providers Listed in Pull-Down Menu 	<ul style="list-style-type: none"> ○ Client Menu-Treatment-Treatment Plan
44. Admit Date	<ul style="list-style-type: none"> ○ Date (mm/dd/yyyy) ○ Cannot be Prior to Program Admission Date 	<ul style="list-style-type: none"> ○ Client Menu-Treatment-Treatment Plan
45. Treatment Modality/Service Category	<ul style="list-style-type: none"> ○ Mental Health ○ S.A. Outpatient Detox ○ S.A. Subacute Detox ○ S.A. Residential ○ S.A. Intensive Outpatient ○ S.A. Outpatient 	<ul style="list-style-type: none"> ○ Client Menu-Treatment- Treatment Plan

	<ul style="list-style-type: none"> ○ S.A. Early Intervention/Education ○ MATs 	
46. Mental Health Treatment Modality (enter if Mental Health is the 1st modality)	<ul style="list-style-type: none"> ○ Assertive Community Treatment ○ Case Management/Support Coordination ○ Co-occurring Treatment Services ○ Community-Based Services ○ Crisis Residential/Intensive Crisis Stabilization ○ Doctor/Medication Review ○ Employment Services ○ Inpatient Hospitalization/Partial ○ Day Hospitalization ○ Residential ○ Therapy Services 	<ul style="list-style-type: none"> ○ Client Menu-Treatment- Treatment Plan
47. Sessions	<ul style="list-style-type: none"> ○ Date (mm/dd/yyyy) ○ Treatment Status (compliant, marginal, noncompliant) ○ Session Type (acupuncture, group adolescent, group adult, group family, individual adolescent, individual adult, individual family, missed session, other, recreational therapy) 	<ul style="list-style-type: none"> ○ Client Menu-Treatment- Treatment Plan
48. Substance Abuse Testing	<ul style="list-style-type: none"> ○ Indicate Type, Date, and Result 	<ul style="list-style-type: none"> ○ Client Menu-Substance Abuse Testing
49. Court Review Dates	<ul style="list-style-type: none"> ○ Date (mm/dd/yyyy) 	<ul style="list-style-type: none"> ○ Client Menu-Journal
50. Medication Compliance	<ul style="list-style-type: none"> ○ Compliant ○ Noncompliant ○ Marginal 	<ul style="list-style-type: none"> ○ Client Menu-Medical History
51. Medical Insurance Status (transfers from entry at screening, but should be updated as applicable)	<ul style="list-style-type: none"> ○ Medicaid ○ Medicare ○ None ○ Private Insurance ○ Other 	<ul style="list-style-type: none"> ○ Client Menu-Medical History
52. Incentives	<ul style="list-style-type: none"> ○ Yes/No-if yes, indicate the type, date ordered (mm/dd/yyyy) and reason 	<ul style="list-style-type: none"> ○ Client Menu-Incentives and Sanctions
53. Sanctions	<ul style="list-style-type: none"> ○ Yes/No-if yes, indicate the type, date ordered (mm/dd/yyyy) and reason ○ If jail, enter In-Date (mm/dd/yyyy), and total days (numeric) 	<ul style="list-style-type: none"> ○ Client Menu-Incentives and Sanctions

54. Days in Each Phase	<ul style="list-style-type: none"> ○ Numeric 	<ul style="list-style-type: none"> ○ Automatically recorded in the system based on phase change entry
55. In-Program Offense	<ul style="list-style-type: none"> ○ Yes/No-if yes, indicate the dates of the offense, arrest, and conviction (mm/dd/yyyy), offense category, charge type (felony, misdemeanor, civil), sentence type, and length of sentence 	<ul style="list-style-type: none"> ○ Client Menu-Criminal History
56. In-Program Jail (If jail was not a program sanction)	<ul style="list-style-type: none"> ○ Date admitted (mm/dd/yyyy), number of days in jail (numeric) 	<ul style="list-style-type: none"> ○ Client Menu-Criminal History
57. Bench Warrants	<ul style="list-style-type: none"> ○ Date of bench warrant (mm/dd/yyyy), reason (FTA, other, violation), outcome (discharged from the program, no sanction/continued in the program, none, sanction/continued in the program). 	<ul style="list-style-type: none"> ○ Client Menu-Criminal History

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Set 3: Discharge Data

Minimum Standard Data set for participants discharged from mental health court.

58. Program Action	<ul style="list-style-type: none"> ○ Discharge ○ Reject case ○ Mistaken case ○ Transfer case 	<ul style="list-style-type: none"> ○ Client Menu-Discharge
59. Discharge Date	<ul style="list-style-type: none"> ○ Date (mm/dd/yyyy) 	<ul style="list-style-type: none"> ○ Client Menu-Discharge
60. Discharge Reason	<ul style="list-style-type: none"> ○ Successfully Completed ○ Unsuccessful/New Offense ○ Unsuccessful/Noncompliant ○ Unsuccessful/Absconded ○ Voluntarily Withdrew ○ Medical Discharge ○ Transferred to Another Jurisdiction ○ Death ○ Other 	<ul style="list-style-type: none"> ○ Client Menu-Discharge
61. Offer Related to Court Participation	<ul style="list-style-type: none"> ○ Charge Reduction ○ Sentence Reduction ○ Both Charge and Sentence Reduction ○ Case Dismissal ○ None 	<ul style="list-style-type: none"> ○ Client Menu-Discharge
62. Outcome of Charge	<ul style="list-style-type: none"> ○ Both Charge and Sentence Reduced ○ Case Dismissed 	<ul style="list-style-type: none"> ○ Client Menu-Discharge

	<ul style="list-style-type: none"> ○ Charge and/or Sentence Did Not Change ○ Charge Reduced ○ Sentence/Disposition Reduced ○ Other 	
63. Was There a Sentence / Disposition at Discharge From the Court Program	<ul style="list-style-type: none"> ○ Yes/No 	<ul style="list-style-type: none"> ○ Client Menu-Discharged
64. Supervision Status at Discharge	<ul style="list-style-type: none"> ○ Continued on Probation ○ Discharged from the Court's Jurisdiction ○ Other 	<ul style="list-style-type: none"> ○ Client Menu-Discharge
65. Improved Mental Health at Discharge	<ul style="list-style-type: none"> ○ Yes/No 	<ul style="list-style-type: none"> ○ Client Menu-Discharge
66. Improved Quality of Life at Discharge	<ul style="list-style-type: none"> ○ Yes/No 	<ul style="list-style-type: none"> ○ Client Menu-Discharge
67. Employment Improved at Discharge	<ul style="list-style-type: none"> ○ Yes/No 	<ul style="list-style-type: none"> ○ Client Menu-Discharge
68. Housing Improved at Discharge	<ul style="list-style-type: none"> ○ Yes/No 	<ul style="list-style-type: none"> ○ Client Menu-Discharge
69. Employment Type	<ul style="list-style-type: none"> ○ Unemployed ○ Employed Part-Time (less than 35 hours/week) ○ Employed Full-Time (more than 35 hours/week) ○ Not in the Labor Force ○ Retired ○ Student Full-Time ○ Volunteer ○ Disabled 	<ul style="list-style-type: none"> ○ Client Menu-Discharge
70. Education Improved at Discharge	<ul style="list-style-type: none"> ○ Yes/No 	<ul style="list-style-type: none"> ○ Client Menu-Discharge
71. Education Level	<ul style="list-style-type: none"> ○ < Or = 11th Grade ○ GED ○ HS Graduate ○ Some Trade School ○ Trade School Graduate ○ Some College ○ College Graduate 2 year program 	<ul style="list-style-type: none"> ○ Client Menu Discharge

	<ul style="list-style-type: none"> ○ College Graduate 4 year program ○ Some Post Graduate ○ Advanced Degree ○ Community College ○ Not in School 	
72. Custody Status at Discharge	<ul style="list-style-type: none"> ○ Temporarily Lost Custody ○ Regained Custody ○ Parental Rights Terminated ○ Never Lost Custody ○ N/A 	○ Client Menu-Discharge

Set 3: Discharge Tracking

Minimum Standard Data set for participants after being discharged from mental health court.
Calculated at 6 months, 1 year, 2 years, and 3 years

73. Date of report	○ Mm/dd/yyyy	○ Client Menu-Discharge Tracking
74. Has the participant been arrested since completing the program	<ul style="list-style-type: none"> ○ Yes/No ○ If yes, date of arrest ○ If yes, nature of arrest (nonviolent drug crime, violent drug crime, non-violent nondrug crime, violent nondrug crime) 	○ Client Menu-Discharge Tracking
75. Has the participant been convicted of a new crime since completing the program	<ul style="list-style-type: none"> ○ Yes/No ○ If yes, date of conviction ○ If yes, nature of conviction (nonviolent drug crime, violent drug crime, nonviolent nondrug crime, violent nondrug crime) 	○ Client Menu-Discharge Tracking

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